Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

JESSIE TILSON,
PETITIONER
V.
FORREST CITY POLICE DEPARTMENT;
JOE GOFF, CHIEF,
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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14 pp

QUESTION PRESENTED

I. Whether a jury verdict imposing liability upon Joe Goff, Chief of Police, and the Forrest City Police Department is sufficient where the chief, for more than eighteen (18) years, failed to implement policies or training procedures for making arrests where the petitioner was incarcerated for fourteen (14) months without an initial judicial determination of probable cause following a warrantless arrest and without filing an information or any other formal charge?

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

JESSIE TILSON, *Petitioner,*

v.

FORREST CITY POLICE DEPARTMENT;

JOE GOFF, CHIEF, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Jessie Tilson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra,* 3a-74a) is reported at 28

F.3d 802. The district court entered an order (App., infra, 75a-77a) denying the respondents' motion for new trial/j.n.o.v. on January 12, 1993.

JURISDICTION

The court of appeals entered its judgment on July 5, 1994 and denied a request for rehearing en banc on August 22, 1994 (App., *infra*, 1a-2a). The jurisdiction of this Court is invoked under 42 U.S.C. § 1983.

STATUTORY PROVISION INVOLVED

42 U.S.C. § 1983 provides as follows: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or

immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT

The City of Forrest City, Arkansas, incarcerated an innocent African-American man for fourteen months without an initial judicial determination of probable cause following a warrantless arrest, and without filing an information or any other formal charge. Following a jury trial and a verdict for the petitioner, against the Chief of Police and the Forrest City Police Department and a denial of respondents' motion for a new trial or judgment notwithstanding the verdict, the Court of Appeals for the Eighth Circuit reversed, holding that the chief of

police's knowledge that petitioner had been arrested and lack of written procedures for conducting criminal investigations were insufficient to impose liability on the chief of police or the department under § 1983. This decision is inconsistent with other cases in the Eighth Circuit as well as First, Second, Fifth, Seventh, and Ninth Circuit Courts of Appeal.

REASONS FOR GRANTING THE PETITION

The Petitioner, Jessie Tilson, an African American, filed his Complaint against St. Francis County Sheriff's Department, Sheriff Dave Parkman, in his individual and official capacity, Forrest City Police Department, Chief Joe Goff, in his individual and Official Capacity, Officer Bill Dooley, in his individual and

official capacity, and Officer Dewey Ramsey, individually and in his official capacity. The Complaint was filed in the United States District Court, Eastern District of Arkansas, Western Division on September 13, 1990. Jurisdiction was invoked pursuant to 42 U.S.C. § 1983, and the Fourth and Fourteenth Amendments to the United States Constitution.

The appellee, Jessie Tilson, was initially arrested on April 4, 1989 in Round Pond, Arkansas, which is outside of the jurisdiction of the Forrest City Police Department, by Sergeant Bill Dooley and Officer Dewey Ramsey of the Forrest City Police Department. Tilson was questioned without a lawyer present. Thus, his right to have a lawyer was denied.

The April 4, 1989 arrest was made by

the Forrest City Police Department without a warrant. Mr. Tilson was never taken before a judicial officer in accordance with Rule 8.1 of the Arkansas Rules of Criminal Procedure. Further, defendants failed to give Mr. Tilson a probable cause hearing, an arraignment, or a preliminary hearing. Mr. Tilson was subsequently served with a warrant of arrest, while incarcerated, on April 17, 1989. Following the April 17, 1989 arrest, Mr. Tilson was incarcerated for fourteen (14) months. During Mr. Tilson's fourteen (14) month incarceration, the Forrest City Police Department and the Chief of Police failed to take any action to charge Mr. Tilson with a substantive offense, or to have Mr. Tilson released. The jury' verdict imposing liability against the Forrest City Police Department and Chief

Goff is valid from reviewing the pleadings, the record and current legal precedent.

The record shows that Chief Goff knew of Mr. Tilson's arrest and that he was the decision maker and supervisor of the arresting officers. Petitioner alleged in his Complaint that his incarceration was due to bad faith, poor investigation, and malice on the behalf of each defendant. The Petitioner also alleged that the Forrest City Police Department and Chief Goff as defendants failed to take action to conduct a thorough investigation which would have led to Mr. Tilson's release. Further, the record shows that the Forrest City Department and Chief Goff failed to implement any written policy or procedure when arresting suspects for parole violations or any other alleged offense.

For eighteen (18) years, deputies in Forrest City followed verbal orders and common practices dictated by Chief Goff. The jury's verdict imposing liability against the Forrest City Police Department and Chief Goff is valid from reviewing the pleadings, the record and the current legal precedent within the Eighth Circuit and the United States Supreme Court.

Also, the record clearly shows that there was sufficient evidence for the jury to impose liability against Chief Goff and the Forrest City Police Department for the violation of Mr. Tilsons' constitutional rights. Therefore, the jury's verdict should be affirmed.

I. THERE IS SUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT THE JURY'S VERDICT IMPOSING

LIABILITY UPON CHIEF JOE GOFF UNDER 42 U.S.C. § 1983, THE FOURTH AND FOURTEENTH AMENDMENTS.

The Respondent, Chief Joe Goff, appealed the District Court's order denying his Motion for a New Trial and his Motion for Judgment as a Matter of Law. Chief Goff asserted that the jury's verdict imposing liability against him was not based on 42 U.S.C. § 1983; but, on the other hand, was based upon the theory of respondeat superior. However, the record is clearly sufficient to impose liability against the chief pursuant to 42 U.S.C. § 1983. Without objection from Chief Goff or the Forrest City Police Department, the jury was given the following instruction:

PLAINTIFF CLAIMS THAT THE CITY

OF FORREST CITY, A MUNICIPALITY, IS LIABLE TO HIM FOR THE CONSTITUTIONAL DEPRIVATIONS THAT HE ALLEGES. YOU ARE INSTRUCTED THAT THE CITY OF FORREST CITY MAY BE LIABLE WHERE YOU FIND THAT PLAINTIFF HAS BEEN DEPRIVED OF HIS CONSTITUTIONAL RIGHTS AND SUCH DEPRIVATION WAS DONE PURSUANT TO A GOVERNMENTAL CUSTOM, POLICY, ORDINANCE, REGULATION OR DECISION. WHEN THE PLAINTIFF IS INJURED AS A RESULT OF A GOVERNMENT'S POLICY, CUSTOM, REGULATIONS, OR DECISION, WHETHER MADE BY ITS LAWMAKERS OR BY THOSE OFFICIALS WHOSE EDICTS OR ACTS MAY FAIRLY BE SAID TO REPRESENT OFFICIAL POLICY, THE CITY ITSELF IS

RESPONSIBLE FOR THE INJURY THAT IT CAUSED.

There was sufficient evidence for the jury to impose liability against Chief Joe Goff pursuant to the jury instruction because the chief showed reckless disregard towards governmental custom and policy concerning Mr. Tilson's constitutional rights. Hence, because of his policy, decisions, and usual procedure, the jury found for the petitioner. The chief had a legal responsibility and duty for the department's official acts, inaction, and reckless conduct under 42 U.S.C. § 1983.

Chief Goff's reckless indifference to his responsibility and failure to train was sufficient for the jury to impose liability.

The record clearly shows that Chief

Joe Goff, the decision maker, failed the impose any written procedures for making an arrest, and failed to train officers in his department concerning making an arrest for alleged parole violations. Moreover, 18 years, Chief Goff failed to impose any written policy to guide his officers in following the Rules of Criminal Procedure and Constitutional Law as established by the United States Supreme Court. *See Gerstein v. Pugh*, 420 U.S. 103 (1975).

Mr. Tilson's April 4, 1989 arrest was without a warrant. The record clearly indicates, through the officer's testimony, that Mr. Tilson was arrested without a warrant; moreover, the arrest was outside the jurisdiction of the Forrest City Police Department. Neither of the arresting officers were assisted by a

state trooper or an officer from the County in which Mr. Tilson was arrested. In short, Chief Joe Goff and the Forrest City Police Department failed to train his officers concerning Rule 8 hearings. Hence, through his customs, Chief Joe Goff violated Mr. Tilson's constitutional rights.

Chief Goff could be held liable for Tilson's constitutional deprivations based on his personal involvement in the continued detention of Tilson.

> Proof of actual knowledge of constitutional violations is not, an absolute prerequisite for imposing supervisory liability. This court has consistently held that reckless disregard on the part of a supervisor will suffice to

impose liability. See *Martin v. White*, 742 F.2d 469, 474 (8th Cir. 1984); *Miller v. Solem*, 728 F.2d 1020, 1024-25, (8th Cir.), *cert. denied* 469 U.S. 841, 105 S. Ct. 145, 83 L.Ed.2d 84 (1984). This requires "more than mere negligence yet less than malicious or actual intent." *Miller*, 728 F.2d at 1025. Thus, the issue is not whether the Respondents had actual knowledge of the violations, but whether they knew or should have known of them. Having examined the evidence in the record, we are satisfied that a rational jury could have made finding of reckless disregard. *Howard v.*

Adkison, 887 F.2d 134 (8th Cir. 1989).

In *Webster v. Gibson*, 913 F.2d 510 (8th Cir. 1990) (Magill, J.) the Court found that the plaintiff had alleged personal involvement on the part of the sheriff, sufficient to withstand a motion to dismiss, even though the sheriff was not the arresting officer. Chief Joe Goff, as the highest decision-maker in the police department, participated in and developed a custom of making arrests without a written policy or procedure. Chief Goff acquiesced in and approved of unwritten arrest procedures for more than 18 years. Therefore, the jury's imposition of liability against Chief Goff and the Forrest City Police Department should be upheld.

Webster was subject to a warrantless

arrest and was detained for forty-five days without receiving a probable cause hearing. *Webster*, 913 F.2d at 513. Likewise, Mr. Jessie Tilson, was subjected to a warrantless arrest and was detained for fourteen (14) months without receiving a probable cause hearing. The court found that Webster stated a claim against the sheriff because the sheriff knew of Webster's detention and knew there was a statutory requirement that Webster be taken before a judicial officer without unnecessary delay. *Id.* at 514. Tilson alleged in his Complaint that Joe Goff's inaction led to his unlawful and malicious incarceration. Further, the record clearly shows that the chief knew about Tilson's arrest and made public statements at the time of the initial unlawful arrest in the local newspaper.

Importantly, the Chief of Police shall have the power to appoint one (1) or more deputies for the police force for which official acts he shall be responsible, and by whom he may execute all process directed to him. ARK. CODE ANN. § 14-52-202(b)(1). Therefore, the chief was responsible for the official acts and conduct of the arresting officers and thus liable under 42 U.S.C § 1983. *See* ARK. CODE ANN. § 14-52-202. Chief Goff showed clear indifference to the Civil Rights of Mr. Tilson. Moreover, it was clear from the record that Chief Joe Goff's indifference to his responsibilities and duties led to the jury's verdict against both Chief Goff and the Forrest City Police Department and that finding is supported by the evidence. *Cf. Webster*, 913 F.2d at 514.

In addition, the evidence is

sufficient to establish that Chief Joe Goff knew or should have known about the conduct of Lt. Cole, Sgt. Dooley, and Officer Ramsey. Chief Goff approved, condoned, and turned a blind eye of justice to the violation of Tilson's constitutional rights. The testimony in the record shows that the chief did not do anything, he had no meeting(s) with Lt. Cole, chief investigator, or any other officer. Acting under color of law, Chief Goff and the Forrest City Police Department violated Tilson's constitutional rights as follows: (1) arrested Mr. Tilson without a warrant and outside St. Francis County on April 4, 1989; (2) unlawfully detained Mr. Tilson for fourteen (14) months pursuant to an illegal arrest on April 4, 1989; (3) failed to provide Mr. Tilson with a

probable cause hearing; (4) failed to provide Mr. Tilson with a preliminary hearing following his arrest on April 17, 1989; (5) failed to provide written policy for making an arrest; (6) failed to provide adequate training for officers in the Forrest City Police Department; and (7) recklessly disregarded each of the above constitutional violations pursuant to the custom and practice of the Forrest City Police Department.

The jury verdict in this case indicates that the jury believed that the defendant, Joe Goff and the Forrest City Police Department, had violated one or more of Tilson's constitutional rights. An appellate court reviews the evidence in the light most favorable to the prevailing party. *Morgan v. Arkansas Gazette*, 897 F.2d 945 (8th Cir. 1990). Here, the

majority did not review the evidence in the light most favorable to the prevailing party.

The appellate court must Id. *Tilson* affirm the denial of the Motion for Judgment as a Matter of Law if reasonable persons could differ as to the conclusions to be drawn from the evidence. The dissenting opinion in *Tilson v. Forrest City Police Department, supra,* indicates that reasonable persons could differ. The majority panel failed to follow the legal precedent set out in *Morgan. Id.* The majority refused to follow *Morgan* and thereby made "a mockery of the Civil Rights Act to minimize the liability of the Chief of Police. If the Chief, who controls the policies and procedures of his department, is not responsible, then under these

circumstances, nobody can be held liable and the Civil Rights Act becomes a sham for those whose innocence and liberty are trampled upon." *Tilson v. Forrest City Police Department*, 28 F.3d 802, 813 (8th Cir. 1994) (Lay, J. dissenting).

The court totally usurped the jury's verdict and disregarded the Civil Rights Act and established Eighth Circuit precedent. This point can be illustrated in several ways. First, the majority did not use any leading Eighth Circuit authority as a basis for its holding. Moreover, the panel obtained their holding under a completely different legal theory from the well established caselaw concerning municipal liability within the Eighth Circuit. *See* Howard v. Adkison, 887 F.2d 134, (8th Cir. 1989); *Morgan v. Arkansas Gazette*, 897 F.2d 945, (8th Cir.

1990); *Webster v. Gibson*, 913 F.2d 510, (8th Cir. 1990); *Wayland v. City of Springdale*, 933 F.2d 668 (8th Cir. 1991);. and *Angarita v. St. Louis County*, 981 F.2d 1537, (8th Cir. 1992).

Second, in accordance with the well established law in the Eighth Circuit, the dissenting opinion in this case, and the evidence in the record, the jury's verdict imposing liability against Chief Joe Goff and the Forrest City Police Department should not have been reversed. There was sufficient evidence in this case for the jury to impose liability under either the theory of personal involvement or reckless disregard. The jury made that factual determination. *Tilson*, 28 F.3d at 16-18; *See* also p. 17, n.6).

Third, the panel states that the evidence was insufficient to show that

actions on the part of Chief Joe Goff or the Forrest City Police Department violated Mr. Tilson's constitutional rights. The court also states the evidence was insufficient to establish one or more constitutional violations. Here, the court invaded the province of the jury and acted as finders of fact. This amplifies why the panel failed to cite the well-established legal precedent on the issue of municipal liability. Therefore, this court's decision is in direct conflict with the well established precedent in this circuit and the United States Supreme Court. *See Albright v. Oliver*, 114 S. Ct. 807 (1994); See also, *Howard v. Adkison*, 887 F.2d 134, (8th Cir. 1989); and *Angarita v. St. Louis County*, 981 F.2d 1537, (8th Cir. 1992).

Liability may be imposed under 42

U.S.C. § 1983 through two legal theories. First, liability may be imposed if the jury believes that the chief or the department was personally involved in the violation of Mr. Tilson's constitutional rights.

Second, liability may be imposed if the jury believes that the chief or the police department showed reckless disregard or indifference toward the violations of Mr. Tilson's constitutional rights.

The panel reversed a prudent jury finding and in doing so refused to follow well established legal precedent in the Eighth Circuit. The jury was well instructed that it could impose liability against Chief Goff and the Forrest City Police Department under either theory. The instruction given, without an

objection, reads in part "...personal participation in the immediate act which violated the Plaintiff's rights is not required...." *Tilson*, 28 F.3d at 6, n.10. A trial court has broad discretion in choosing form and language of jury instructions. *Angarita*, 981 F.2d at 1547. The jury believed that Chief Goff and the Forrest City Police Department violated one or more of Mr. Tilson's constitutional rights. As stated earlier[1], the evidence clearly supports the jury's verdict.

The panel states that "inaction or laxness can constitute government actions if it is permanent and well settled." *See Monell v. New York City Dep't of Social Servs.*, 436 U.S. 658, 691 (1978). "Such a government custom of laxness or inaction

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[1]See the Constitutional violations (1-7), *supra*, pp. 7-8

must be the moving force behind the constitutional violation." *Tilson*, supra, (quoting *Monell*, 436 U.S. at 694). The panel relies on *Monell*, for its holding. However, the panel did not rely or base its decision on the well established case law in the Eighth Circuit and the United States Supreme Court since 1978. *See Gerstein v. Pugh*, 420 U.S. 103, (1975); Owens v. City of Independence, 445 U.S. 622 (1980); *City of Canton v. Harris*, 489 U.S. 378, (1989); and *Albright v. Oliver*, 114 S. Ct. 807, (1994); *See also Howard v. Adkison*, 887 F.2d 134, (8th Cir. 1989); *Morgan v. Arkansas Gazette*, 897 F.2d 945, (8th Cir. 1990); *Webster v. Gibson*, 913 F.2d 510 (8th Cir. 1990); *Wayland v. City of Springdale*, 933 F.2d 668, (8th Cir. 1991); and *Angarita v. St. Louis County*, 981 F.2d 1537, (8th Cir. 1992).

All of the above cases clearly hold that inaction or laxness can constitute government custom and that such government custom of laxness or inaction must be the moving force behind the constitutional violation. During Chief Goff's direct examination concerning the *Times-Herald* article of April 18, 1989, Chief Goff stated that "Tilson had been in custody since April 4, when he was originally arrested near Round Pond on a parole violation for theft from Prescott County, Missouri." Hence, the chief was aware of the arrest outside the city limits.

The chief approved of and acquiesced in the conduct of Lt. Cole, who was the supervisor of the CID Division. Therefore, there was sufficient evidence for the jury to believe that Chief Goff knew of Mr. Tilson's arrest and failed to

take any action to obtain a preliminary or probable cause hearing on Mr. Tilson's behalf. (TR Vol. II 207-08, lines 11-25; 201-10, lines 1-4) and (TR Vol. I 147, lines 16-17). There was no other way for Mr. Tilson to secure a release from custody. Thus, the chief and the Forrest City Police Department clearly violated Mr. Tilson's rights. *See Gerstein v. Pugh*, 420 U.S. 103, (1975).

Moreover, in the newspaper article, Chief Goff stated, "A number of relatives and acquaintances had been ruled out as suspects in the crime." (TR Vol. I 146, line 25; 147, lines 1-22). Clearly there was sufficient evidence for the jury to impose liability against Chief Goff and the Forrest City Police Department.

The record shows that there was no written policy followed in the course of

this investigation by either the arresting officers or Chief Goff. The panel found it significant that Mr. Tilson was held in the St. Francis County Jail as opposed to the Forrest City jail. However, in practice, it was the Forrest City Police Department's procedure to hold all individuals arrested by the department in the St. Francis County jail, with the exception of a few misdemeanor charges. The jury, therefore, believed that the department's failure to implement written policies concerning arrests which caused Mr. Tilson's unlawful detention.

For eighteen (18) years Chief Goff and the Forrest City Police Department have made arrests and held arrestees without written procedures. When Chief Goff and the Forrest City Police Department failed to take actions or make

arrangements for Mr. Tilson to have a hearing, they violated 42 U.S.C. § 1983. *See Gerstein v. Pugh*, 420 U.S. 103, (1975); and *Albright v. Oliver*, 114 S. Ct. 807, (1994). Tilson was incarcerated because of the unlawful arrest by the Forrest City Police Department, thus Tilson did establish that Goff and the department were directly responsible for Tilson being held in the St. Francis County Jail for fourteen (14) months.

The panel asserted that Chief Goff and the Forrest City Police Department are not liable under 42 U.S.C. § 1983. The jury could have believed that the reason for the unlawful arrest was that Chief Goff and the Forrest City Police Department failed to properly train and supervise their officers. It is and was the duty of Chief Goff and the Forrest

City Police Department to properly train and supervise their officers. It is clear that Joe Goff, as chief of the Forrest City Police Department, was the highest decision-maker concerning custom, procedure, policy, and training. The panel agrees "that there is no evidence indicating that Mr. Tilson received a probable cause hearing after his initial arrest, and Mr. Tilson, at a minimum, had a due process right to an informal preliminary hearing at the time of his arrest." *Tilson*, 28 F.3d at 9, n. 14.

Therefore, the jury verdict is supported by the evidence. In his vigorous dissent, former Chief Judge Donald Lays states "Such deliberate indifference and lack of proof as to the reasons for the prolonged detention provide a jury with a basis to find

liability. Such situations clearly fall within the ambit of § 1983, which seeks to protect individuals such as Tilson from the deprivation of their constitutional rights. The City had the duty to ensure a prompt judicial determination of probable cause and this responsibility was implicitly delegated by law to the supervisor of the Police Department to see that it was carried out." *Id.* at 20.

The panel agrees that the evidence support a lack of written procedure established by Chief Goff and the Forrest City Police Department. Therefore, the jury could have inferred that there was a lack of training and supervision within the department and the lack of training and supervision caused the constitutional violations suffered by Mr. Tilson. In this case, the jury was given special

interrogatories, which allowed them to find against the Department, Chief Joe Goff, Officer Dooley, and Officer Ramsey. The jury had the opportunity to impose liability on one individual defendant, all defendants or any variation thereof. The jury instruction was offered and given without objection from the defendants. The jury indicated, via special interrogatory verdict form, that Chief Joe Goff's and the Forrest City Police Department's failure to train and supervise officers thereof led to the violation of Mr. Tilson's constitutional rights.

At a minimum, the evidence shows deliberate indifference on the part of Chief Goff and the Forrest City Police Department. Thus, the jury verdict against Chief Goff and the Forrest City

Police Department should be upheld. (TR Vol. II 190, lines 2-25; 191, lines 1-25; 192, lines 1-25; 193, lines 1-8; 194, lines 1-25; 195, lines 8-11, 15-22). *Wayland v. City of Springdale*, 933 F.2d 668, (8th Cir. 1991); *Bolin v. Black*, 875 F.2d 1343, (8th Cir.), *cert. denied*, 493 U.S. 933 (1989) and *Hahn v. McLey*, 737 F.2d 771, 773 (8th Cir. 1984).

Since the holding by the panel indicates that well established law was not followed, the judgment of the trial court should be affirmed. The Honorable Elsijane T. Roy was the trial judge in this matter and was in a position to hear the evidence and personally observe the demeanor of the witnesses and, thus, in a better position to rule on the evidence. Judge Roy, an experienced trial judge, denied the Defendant's Motion for Judgment

as a Matter of Law. The panel's decision to reverse Judge Roy's ruling is contrary to the this Court precedent and established law in the Eighth Circuit.

II. THE DECISION OF THE COURT OF APPEALS IS ERRONEOUS

The Panel's opinion directly conflicts with this Court and Eighth Circuit precedent, in particular, *Gerstein v. Pugh*, 420 U.S. 103, (1975); *Baker v. McCollan*, 442 U.S. 137 (1979); *Owens v. City of Independence*, 445 U.S. 622, (1980); *Oklahoma City v. Tuttle*, 471 U.S. 808 (1985); *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986); *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988); *City of Canton v. Harris*, 489 U.S. 378 (1989); and *Albright v. Oliver*, 114 S. Ct. 807, (1994). *Howard v. Adkison*, 887 F.2d 134, (8th Cir. 1989); *Morgan v. Arkansas*

Gazette, 897 F.2d 945, (8th Cir. 1990); *Webster v. Gibson*, 913 F.2d 510 (8th Cir. 1990); *Wayland v. City of Springdale*, 933 F.2d 668, (8th Cir. 1991); and *Angarita v. St. Louis County*, 981 F.2d 1537, (8th Cir. 1992). *See generally Bordanaro v. McLeod*, 871 F.2d 1151 (1st Cir. 1989); *Coleman v. Frantz*, 754 F.2d 719 (7th Cir. 1985); and *Oviatt by and through Waugh v. Pearce*, 954 F.2d 1470 (9th Cir. 1992).

This Court in *Gerstein v. Pugh*, 420 U.S. 103 (1975), held that a judicial determination of probable cause is a prerequisite to the extended restraint on liberty. Tilson's procedural due process rights were violated since he was not given a probable cause hearing, an arraignment or a preliminary hearing. *See Baker v. McCollan*, 442 U.S. 137 (1979). Depending upon the circumstances, a state

may still violate a defendant's due process rights even though the defendant is being held pursuant to a valid warrant. *Id.* at 145

The First Circuit, in *Bordanaro v. McLeod*, 871 F.2d 1151 (1st Cir. 1989), addressed an issue similar to that of the *Tilson* case. The jury returned a verdict against the City of Everett, its Mayor (Edward Connolly) and its Chief of Police (Donald Bontempo) even though neither of them directly participated in the events that caused harm to the plaintiffs. *Id.* at 1154.

Also similar to the *Tilson* case, motion for judgment notwithstanding the verdict or a new trial was denied by the trial judge. That court stated "We cannot determine credibility, resolve conflicting testimony, or evaluate the weight of the

evidence." *Id.* The court continued "Judgment nov should be granted only when the evidence could lead reasonable men to but one conclusion." *Id.* The district court judge was in a better position to observe the demeanor of the witnesses concerning conflicting testimony and thus in a better position to evaluate the weight of the evidence. Therefore, the trial court's order denying a motion for a new trial should have been affirmed by the Eighth Circuit. *See Morgan v. Arkansas Gazette*, supra.

Further that court indicated that where a "municipality's failure to train its employees in a relevant respect evidences a deliberate indifference to the rights of its inhabitants, can such a shortcoming be thought of as a city policy or custom that is actionable under §

1983." *Bordanaro*, 871 F.2d at 1158. In the petitioner's case the jury could have reasonably inferred from the evidence that Chief Goff showed a deliberate indifference to Mr. Tilson's 14 month deprivation of liberty. The evidence presented was that there were no policies for making arrests, there were no meetings to discuss the arrests made, and there were no officers disciplined by Chief Goff. The chief testified that he knew of the petitioner's arrest, yet chose to neither take actions to secure Mr. Tilson's release nor to impose any disciplinary sanctions against the officers who were responsible for the warrantless arrest. Thus the jury found that these shortcomings or inactions were the city's policies and customs.

The Second Circuit, in *Fiacco v. City*

of Rensselaer, 783 F.2d 319 (2nd Cir. 1986), upheld a jury verdict imposing liability against the city in a police brutality case. The court stated that the jury was asked to answer special interrogatories as to the city's liability. "(1) Whether the defendants engaged in a course of conduct or had a policy of deliberate indifference to the supervision of the defendant police officers which proximately resulted in the deprivation of Fiacco's right to wit: not to be punished or not to have excessive force used against her during her arrest or detention without due process of law in violation of her constitutional right under the fifth and fourteenth amendments and pursuant to Title 42 section 1983, and (2) whether the City defendants 'negligently failed to supervise [the

Officers] which negligent supervision was a proximate cause of the injuries sustained by ... Fiacco.'" *Id.* at 322-23.

Likewise, in petitioner's case, the jury were asked which of the defendants do you find have violated any of petitioner's constitutional rights. The jury verdict indicated that Chief Goff and the Forrest City Police Department had violated the petitioner's constitutional rights. It is clear that the jury could have inferred from the evidence that the chief had engaged in a course of conduct or had a policy of deliberate indifference to the supervision of Forrest City Police Officers which proximately resulted in the petitioner's 14 month deprivation of liberty via incarceration.

Moreover, the jury could have found that the petitioner's arrest and detention

were without due process of law and in violation of his constitutional rights under the fifth and fourteenth amendments and under Title 42 U.S.C § 1983. Finally, because Chief Goff testified that he had never implemented policies and procedures for making an arrest, the jury inferred negligent failure to supervise and train were also the proximate cause of Mr. Tilson's deprivation of liberty. *See generally Fiacco*, 783 F.2d at 324.

In the Fifth Circuit, the plaintiffs brought an action pursuant to 42 U.S.C. § 1983 against the sheriff of Dekalb County, Georgia and two (2) of his deputies. The plaintiffs alleged that their constitutional rights were violated by each defendant. In particular, they contended that while the two (2) deputies were serving a warrant, one of the

deputies did shine his flashlight upon the nude body of one of the plaintiffs. *Id.* The jury returned a verdict imposing liability upon the sheriff but finding in favor of the two (2) individual officers. The fifth circuit affirmed the verdict indicating that the jury could have reasonably concluded that the two (2) deputies were acting pursuant to policies implemented by Sheriff Bonner.

Likewise, in the petitioner's case, the jury returned a verdict imposing liability upon the chief and the Forrest City Police Department, but found in favor of the two (2) individual officers. The jury could have reasonably concluded that the two (2) officers were acting pursuant to policies implemented by Chief Goff. However, the Eighth Circuit reversed the jury verdict and decided that the evidence

did not support such a finding. *Id. Tilson, supra*. This is one example of the inconsistencies among the circuits concerning the issue of municipal imposing liability.

In the Seventh Circuit, an eighteen (18) day detention before an initial appearance violates due process. *Coleman v. Frantz*, 754 F.2d 719 (7th Cir. 1985). In the case at bar, the petitioner was initially arrested without a warrant. Following his arrest, he was never given a probable cause hearing, an arraignment or a preliminary hearing. Here, the petitioner was incarcerated for a period of 14 months without a probable cause hearing, an arraignment, or a preliminary hearing. Thus, there is a clear inconsistency between the Seventh and the Eighth Circuits concerning municipal

liability under 42 U.S.C. § 1983. Hence, this Court should grant certiorari to resolve the inconsistencies among the circuits.

The Ninth Circuit, in *Oviatt by and through Waugh v. Pearce*, 954 F.2d 1470 (1992), affirmed a jury verdict for the plaintiff who had been incarcerated for 14 days without being arraigned. *Id.* The defendants argued that the plaintiff did not established a affirmative link between his deprivation of liberty and any official policy. Instead the defendants argued that the true cause of the plaintiff's missed arraignment and prolonged incarceration was because of the court's clerical error.

That court stated that the plaintiff need only demonstrate "the identified deficiency ... is closely related to the

ultimate injury." *Id.* at 1478 (citing *City of Canton v. Harris*, 489 U.S. at 391). In the case at bar, the Eighth Circuit's majority indicated that the prosecuting attorney is likewise responsible for Mr. Tilson's deprivation. In addition, the Eighth Circuit majority suggests that the Forrest City Police Department is somehow removed from liability because the defendant was housed in the St. Francis County Jail. This is clearly against the thrust of significant Eighth Circuit rulings and, more importantly, rulings of this court.

In *Wayland v. City of Springdale*, 933 F.2d 668 (8th Cir. 1991), that court determined that the city, police chief, and two officers could be held liable for the detention of an individual for six days following a warrantless arrest, even

if they were not responsible for the delay in arraignment. *Id.* at 670-71. It is clear that the ruling in *Tilson*, supra, is inconsistent with *Wayland*, supra and *County of Riverside*, supra.

In the *County of Riverside*, this Court held that the burden was on the defendant to show why the detainee [petitioner] was held without being given a prompt probable cause hearing. 500 U.S. at 57. Specifically, "where an arrested individual does not receive a probable cause determination within 48 hours, the calculus changes. In the case at bar, the Forrest City Police Department did not demonstrate the existance of a bona fide emergency or other extraordinary circumstances as reasons for denying Mr. Tilson a probable cause hearing within 48 hours. In such a case, the arrested

individual does not bear the burden of proving an unreasonable delay. Rather, the burden shifts to the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance." *Id.*

III. THE QUESTION PRESENTED IS IMPORTANT

The court is being asked to review this case based upon a Title 42 Section 1983 claim. In cases of this nature private parties "act not only on their own behalf, but also 'as private attorneys general in vindicating a policy that Congress considered to be of the highest priority." See *Trafficante v. Metropolitain* Life Ins. Co., 409 U.S. 205, 211 (1972).

Local government entities are liable, under Section 1983, for unconstitutional

conduct of officials of the entity who have final policymaking authority over the subject matter in question. *Pembaur v. City of Cincinnati,* 475 U.S. 469, 483-84 (plurality opinion). State statutes, caselaw, and customs or usages having the force of law are brought to bear by the trial court in determining where policymaking authority lies and which officials or government agencies have such authority with respect to the challenged action. *Jett v. Dallas Indep. School Dist.*, 491 U.S. 701, 737 (1989); *City of St. Louis v. Praprotnik,* 485 U.S. 112 (1988) (plurality opinion).

Arkansas law is clear in the area as it relates to Police Chiefs. The Chief of Police shall have the power to appoint one (1) or more deputies for the police force for which official acts he shall be

responsible, and by whom he may execute all process directed to him. ARK. CODE ANN. § 14-52-202 (b) (1). There can be no dispute as to whether Chief Joe Goff of Forrest City Police Department had final policymaking authority.

The more important issue here is that, according to the panel reviewing this case, the chief of police cannot be held responsible for actions of his subordinates under a respondeat superior theory. Local government officials who have "final policymaking authority may by their actions subject the government to § 1983 liability." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 123 (1988). This requirement shields the government from a lower standard, a negligence standard, of liability for its employees.

In the case at bar, the panel decided

that the Chief of Police had "final policymaking authority." Yet, even though he had neither promulgated written policies or procedures during his eighteen year tenure, instituted an internal training program, nor established any other procedural safeguards, the panel decided that there was not enough evidence to sustain the verdict for the petitioner.

There are at least two problems with that decision. First, the respondents did not assert insufficiency of the evidence as part of their appeal. Second, it was within the province of the jury to decide the factual issues in this case; all inferences should be drawn in favor of sustaining the jury verdict.

Finally, Congress did not intend for such an anomaly to occur. Actually, it does not occur in the other circuit courts

of appeal and did not occur in the Eighth Circuit prior to this case[2]. Therefore this Court should act to resolve the issues involved herein and settle the dispute among the circuit courts of appeal.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

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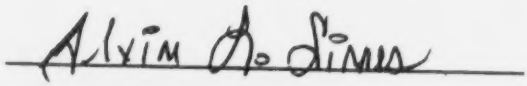
[2]This case could change the trend of cases involving municipal liability. This decision also fails to follow several Supreme Court cases.

I hereby certify that all of the above statements are true and are made under the pains and penalties of perjury.

Respectfully submitted,



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Dated: December 29, 1994

APPENDIX: A

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

NO. 93-1204/1324EALR

Jessie Tilson,

Appellee/Cross-Appellant

v.

Forrest City Police Department,

et al.,

Appellant/Cross-Appellee

Order Denying Petition for Rehearing and Suggestion for Rehearing En Banc

The suggestion for rehearing en banc is denied. Chief Judge Arnold, Judge McMillan, and Judge Wollman would grant the suggestion for rehearing en banc.

The petition for rehearing by the panel is also denied.

August 22, 1994

Order Entered at the Direction of the Court:

Signed by: Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX: B

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 93-1204

Jessie Tilson, *

Appellee, *

v. *

Forrest City Police Department; *

Joe Goff, Chief, *

Appellants. *

No. 93-1324

Jessie Tilson, *

Appellant, *

v. *

Forrest City Police Department; *

Joe Goff, Chief; Bill Dooley, *

Sgt., Individually and in his official capacity; Dewey Ramsey, Officer, Individually and in his official capacity; Dave Parkman, Sheriff, Individually and in his official capacity,

Appellees.

Appeals from the United States District Court for the Eastern District of Arkansas.

Submitted: September 16, 1993

Filed: July 5, 1994

Before MAGILL, Circuit Judge, LAY, Senior Circuit Judge, and HANSEN, Circuit Judge.

MAGILL, Circuit Judge.

The Forrest City Police Department (the Department) and Chief of Police Joe

Goff (Goff) appeal the district's court's denial of their posttrial motions for judgment as a matter of law[1] and for a new trial. In this 42 U.S.C. §1983 action, the jury found the Department and Goff to have violated the constitutional rights of Jessie Tilson (Tilson). We find that as a matter of law this verdict lacked a "legally sufficient basis for a reasonable jury to have found for [Tilson]." See Fed. R. Civ. P. 50(a). Hence, we reverse, finding that the district court erred when it denied the motion for judgment as a matter of law.

I. BACKGROUND

The facts underlying Tilson's claim

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[1]This motion previously was termed a "motion for judgment not withstanding the verdict." Fed. R. Civ. P. 50(a), advisory committee's note.

are disturbing. Tilson was arrested on April 4, 1989, by two Forrest City police officers, Bill Dooley and Dewey Ramsey, and taken to the St. Francis County jail.[2]

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[2]The dissent states Tilson's April 4 arrest was made without a warrant. The factual scenarios surrounding Tilson's arrests appear much clearer to the dissent than to the majority. Although our holding does not rely upon a determination of the legality of Tilson's arrest, in Arkansas a parole violator may be arrested without a warrant. See Ark. Code Ann. §16-93-705(a)(4) (Michie 1987) ("Any parole officer may arrest a parolee without a warrant or may deputize any officer with power of arrest to do so by giving him a written statement setting forth that the parolee, in the judgment of the parole officer, violated conditions of

Dooley and Ramsey testified at the trial that they arrested Tilson as a Missouri parole violator,[3] while investigating

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parole."); see also Cole v. Nebraska State Bd. of Parole, 997 F.2d 442, 444 (8th Cir. 1993) (arrest by state actor of parole violator must be authorized by state law).

[3]The officers ran Tilson's name through the National Crime Information Center (NCIC) and in return received a teletype message that Tilson was wanted on an absconder warrant as a parole violator. See Dist. Ct. Ex. List (Teletype message dated April 4, 1989). The message received through NCIC gives the wanted person's physical description and any identifying scars or tatoos. Tr. Vol. II, at 276. Dooley testified that on April 5, 1989, he was contacted by telephone Robert K. Newsom, a Missouri

Tilson in association with a recent murder.

On April 17, 1989, while still in jail, Tilson was arrested for murder on a warrant issued by an Arkansas Circuit Judge. Bond was set on the warrant at $50, 000. Such a warrant can be issued upon a finding by the judicial officer that there is reasonable cause to believe an offense has been committed and that the person to be arrested committed it. Ark. R. Crim. P. 7.1(b). On April 19, 1989,

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parole officer, to confirm the teletype message. Id. at 278. Dooley also testified that after he obtained sufficient evidence to arrest Tilson for murder, he contacted the Missouri authorities to inform them that Tilson could not be extradited at that time. Id. at 279.

Tilson appeared before a municipal court judge who bound him over to the circuit court. The record is unclear as to whether at the time Tilson received a probable cause hearing pursuant to Arkansas Rule of Criminal Procedure 8.3[4]

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[4]Tilson appeared before a judicial officer when he was bound over to the circuit court. He may have, at least he should have, received an informal, non-adversarial determination of probable cause at that time. Arkansas Rule of Criminal Procedure 8.3, requires a judicial officer to inform the defendant of the charge and, "if unable to dispose of the case," Ark. R. Crim. P. 8.3(c), the judicial officer shall "determine in a non-adversarial hearing whether there is probable cause for detaining the arrested person." Id. We are unwilling

The county prosecutor, aware that Tilson was incarcerated, never attempted to indict Tilson, file an information, or take steps to release Tilson.

Tilson remained in the St. Francis County jail for the next fourteen months, next appearing in court on June 11, 1990.[5]

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to assume without further evidence--nor is it necessary to our holding--that because Tilson appeared before the judge and was advised of the penalties, Appellant's Br. at 25, he also received a probable cause hearing.

[5]Tilson had an attorney appointed for him on April 19, 1989. His attorney and the prosecutor made a joint motion for a psychiatric evaluation that was granted on May 4, 1989. The evaluation was not completed until December 4, 1989. The prosecutor testified that during this

On that day, pursuant to a newly filed petition for habeas corpus, Tilson was released, never charged with any crime.

This 42 U.S.C. §1983 action was brought by Tilson claiming that Officers Dooley and Ramsey violated Tilson's constitutional rights through the following acts: arresting him without probable cause,[6] questioning him without an attorney, and failing to conduct properly the criminal investigation. Liability for Goff and the Department was premised on their failure to act to prevent Tilson's continued unlawful incarceration. The suit originally

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interval, under Arkansas law, he was prohibited from prosecuting Tilson.

[6]This claim relates to both arrests: the parole-violation arrest on April 4 and the murder arrest on April 17.

included the St. Francis County Sheriff's Department and the St. Francis County Sheriff; however, these parties were dismissed pursuant to a grant of summary judgment.

The jury found that neither Dooley nor Ramsey had violated Tilson's constitutional rights.[7] It did, however,

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[7]The interrogatory given to the jury was as follows:

INTERROGATORY#2 INDICATE WHICH OF THE NAMED DEFENDANTS YOU HAVE FOUND TO HAVE VIOLATED THE PLAINTIFF'S CONSTITUTIONALLY PROTECTED RIGHTS. (Answer "YES" or "NO" as to each defendant.)

FORREST CITY POLICE DEPARTMENT	YES
CHIEF JOE GOFF	YES
SGT. BILL DOOLEY	NO
OFFICER DUEY [sic] RAMSEY	NO

Appellant's Br. at 26.

return a verdict against both the Department and Goff (collectively, the defendants). The defendants filed motions for judgment as a matter of law and for a new trial. The district court denied both motions, and the defendants timely appealed.[8]

II. DISCUSSION

An appellate court reviews a district

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[8]Tilson cross-appealed, but he failed to identify in his brief the issues he raises on cross-appeal. In his notice of cross-appeal, Tilson asserts that the jury erroneously acquitted Dooley and Ramsey and requests an enhanced damage award. These issues were not briefed and thus are waived on appeal. See United States v. Simmons, 964 F.2d 763, 777 (8th Cir.), cert. denied, 113 S. Ct. 632 (1992).

court's denial of a posttrial motion for judgment as a matter of law under the same standard utilized by the district court. Morgan v. Arkansas Gazette, 897 F.2d 945, 948 (8th Cir. 1990). The appeals court must consider the evidence in the light most favorable to the prevailing party and "affirm the denial of the motion if reasonable persons could differ as to the conclusions to be drawn from it." Id. Bearing in mind the deference accorded by this standard to a jury verdict, we still must reverse because assuming all the evidence was believed by the jury, the evidence was nonetheless insufficient to have found the defendants liable under § 1983.

For the jury to have found the Department or Goff liable in this § 1983 action, it must have had before it

evidence of their direct participation in a constitutional deprivation. Cf. Monell v. New York City Dep't of Social Servs., 436 U.S. 658, 691 (1978) (respondeat superior cannot form the basis for liability under § 1983). Simply put, the evidence before this jury must have allowed it to identify (1) action on the part of Goff or the Department causing (2) one or more constitutional violations.

A. Liability under Section 1983

1. Goff's Liability

A supervisor, such as Goff, may be held liable under § 1983 if he directly participated in the constitutional violation, see Webster v. Gibson, 913 F.2d 510, 514 (8th Cir. 1990),[9] or if his

[9]The dissent cites Webster to support its proposition that Goff's knowledge of Tilson's detention is

sufficient evidence to support this jury verdict. See post, at 16-17. We disagree. We agree that Webster stands for the proposition that allegations of direct involvement on the part of a supervisor are sufficient to state a claim under § 1983. 913 F.2d at 514. Webster reversed a district court's 28 U.S.C. § 1915 dismissal of a pro se complaint because it was neither "baseless" nor did it fail to state any "rational argument in law or fact." Id. The Webster court did not extend the law so as to allow § 1983 relief for a plaintiff without any proof of causation. We note that the complaint at issue in Webster alleged that the "Sheriff of Ashley County on 9-30-88 detained me [the plaintiff] without a warrant." Id.

failure to train or supervise the offending actor who caused the deprivation,[10] see City of Canton v.

(emphasis added). Unlike the cases cited by the dissent in support for its position, Tilson was not held by the Department or Goff; rather Tilson was held by the St. Francis County jail. See supra at 4 ("The suit originally included the St. Francis County Sheriff's Department and the St. Francis County Sheriff; however, these parties were dismissed pursuant to a grant of summary judgment.").

[10]The jury instruction regarding Goff's liability reads as follows: PLAINTIFF MAKES A CLAIM NOT ONLY AGAINST THE POLICE OFFICERS INVOLVED IN THE INCIDENT, BUT ALSO AGAINST THE CHIEF OF POLICE, JOE GOFF. IN ORDER FOR THE

DEFENDANT CHIEF OR POLICE TO BE LIABLE TO THE PLAINTIFF, THE PLAINTIFF MUST SHOW THAT THIS OFFICIAL EITHER ENCOURAGED THE SPECIFIC INCIDENT OF MISCONDUCT OR IN SOME OTHER WAY DIRECTLY PARTICIPATED IN IT. AT A MINIMUM, PLAINTIFF MUST SHOW THAT THE DEFENDANT OFFICIAL AT LEAST OFFICIALLY AUTHORIZED, APPROVED, OR KNOWINGLY ACQUIESCED IN THE UNCONSTITUTIONAL CONDUCT OF THE OFFENDING OFFICERS. PERSONAL PARTICIPATION IN THE IMMEDIATE ACT WHICH VIOLATED THE PLAINTIFF'S RIGHTS IS NOT REQUIRED. IT IS SUFFICIENT IF THE SUPERIOR OFFICER SITS IN MOTION A SERIES OF ACTS BY OTHERS, OR KNOWINGLY REFUSES TO TERMINATE A SERIES OF ACTS BY OTHERS, WHICH HE KNOWS OR REASONABLY SHOULD KNOW WOULD CAUSE OTHERS TO INFLICT THE

Harris, 489 U.S. at 378, 388 (1989) (alleging failure to train); Bolin v. Black, 875 F.2d 1343, 1347 (8th Cir.) (alleging failure to supervise), cert. denied, 493 U.S. 993 (1989). The standard

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CONSTITUTIONAL INJURY.

Appellee's Br. at 30. Although the court's instruction does not clearly articulate a failure-to-train-or-supervise claim, the language "knowingly refuses to terminate a series of acts by others" can be construed to state a failure-to-train claim. Because a failure-to-supervise claim must show tacit approval or authorization for the subordinate's action, the statement in the instruction regarding knowing acquiescence or authorization in unconstitutional conduct can be construed to state a failure-to-supervise claim.

of liability for a failure to train police officers is deliberate indifference. City of Canton, 489 U.S. at 388. The standard of liability for failure to supervise is "demonstrated deliberate indifference or tacit authorization of offensive acts." Bolin, 875 F.2d at 1347.

2. The Department's Liability

For the Department to be liable under § 1983 for a constitutional violation, a claimant must show that

> the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by [the Department] or that a constitutional deprivation [was] visited pursuant to governmental

> 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channels.

Marchant v. City of Little Rock, 741 F.2d 201, 204 (8th Cir. 1984) (quoting Monell, 436 U.S. at 690) (internal quotations omitted).

The inaction or laxness alleged by Tilson, lack of written procedures,[11] was not "officially adopted or promulgated." However, inaction or laxness can

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[11]We note that the dissent has reshaped Tilson's claim. The dissent states that "Chief Goff . . . never established procedures for the police department, "post, at 19. Tilson established that there were no written procedures.

constitute government custom if it is permanent and well settled. See Monell, 436 U.S. at 691. Such a government custom of laxness or inaction must be the moving force behind the constitutional violation. Id. at 694.

B. Constitutional Violations

Tilson's complaint alleges the following constitutional violations: (1) arrest without probable cause, (2) unlawful incarceration for fourteen months, and (3) questioning him without an attorney and a valid waiver of his rights.[12] We consider Tilson's allegations in turn.

1. Arrest without Probable Cause

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[12]Tilson made this allegation in his complaint; however, because the jury was not instructed on this alleged violation, we do not consider it here.

Tilson's primary allegation at trial was that both the April 4 and the April 17 arrest were unsupported by probable cause. Although the jury found that neither Dooley nor Ramsey violated Tilson's constitutional rights, we nevertheless will consider these allegations.[13] To

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[13]By finding Dooley and Ramsey to be not liable, it is likely that the jury found that they had probable cause for the arrests. It is also possible that the jury found that Dooley and Ramsey were not liable because, although they lacked probable cause, they also lacked the requisite state of mind. See, e.g., Malley v. Briggs, 475 U.S. 335, 344-45 (1985) (police officers retain qualified immunity for an unlawful arrest unless "the warrant application is so lacking in indicia of probable cause as to render

establish the liability of Goff or the Department for an unlawful arrest, Tilson must have offered evidence to the jury allowing it to infer that Goff knowingly and directly participated in an arrest without probable cause, or that Goff's failure to train or supervise his subordinates or a custom of the Department caused the unlawful arrest. See Monell, 436 U.S. at 694.

An examination of the record offers no such evidence. Tilson merely established that Goff knew of Tilson's arrest and incarceration. Tilson offered no evidence which would have allowed the jury to have inferred that Goff's or the

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official belief in its existence unreasonable"). In the instant case, we note the jury received a good-faith defense instruction.

Department's actions caused an arrest without probable cause. Had Tilson shown that Goff was "deliberately indifferent" to the use by Dooley or Ramsey of illegal methods of obtaining an arrest warrant, this would have been sufficient evidence to sustain the jury verdict against Goff. However, here, all we have is Goff's knowledge that Tilson had been arrested and a lack of written procedures. This evidence is as a matter of law insufficient to impose liability under § 1983.

2. Deprivation of Liberty

Two inquiries control liability for Tilson's deprivation of liberty: Was Tilson unconstitutionally deprived of his right to liberty;[14] and, if so, were

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[14]We disagree with the dissent's statement that "Tilson's Fourth Amendment

rights as explicated in Gerstein have been violated." Post, at 20. We agree that there is no evidence indicating that Tilson received a probable cause hearing after his initial arrest, and we agree that Tilson, at a minimum, had a due process right to an informal preliminary hearing at the time of his arrest. Parole "'[r]evocation deprives an individual, not of the absolute liberty to which every citizen is entitled, but only of the conditional liberty properly dependent on observance of special parole restrictions.'" Gagnon v. Scarpelli, 411, U.S. 778, 781 (1973) (quoting Morrissev v. Brewer, 408 U.S. 471, 480 (1972)). See also Morrissev, 408 U.S. at 485 (explaining that a parole violator should receive an informal preliminary

either Goff or the Department responsible for causing the deprivation?

We decline to reach the first question, see Jean v. Nelson, 472 U.S. 846, 854 (1985) ("Prior to reaching any constitutional questions, federal courts must consider nonconstitutional grounds for decision.") (internal quotes and citations omitted), because there was no evidence before this jury that any policy or custom of the Department or any direct action, failure to supervise, or failure to train on the part of Goff caused or was the moving force behind Tilson's deprivation of liberty. See Monell, 436 U.S. at 694. To the contrary, the only relevant evidence before this jury was

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hearing where the arrest occurs); accord Gerstein v. Pugh, 420 U.S. 103, 121 n.22 (1975).

that Goff knew Tilson was incarcerated and that neither the Department nor Goff promulgated any written procedures to guide a criminal investigation. Section 1983 requires more. Tilson must have shown that Goff's lack of action caused Tilson's deprivation of liberty. As to the Department, Tilson must similarly have shown some departmental custom was the moving force behind Tilson's incarceration.

The facts before this jury indicated that Goff knew Tilson was incarcerated in the St. Francis County jail[15] and that

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[15]The dissent states that the jail was "part and parcel of the government structure of the City of Forrest City." Post, at 21. We disagree based upon the record indicating that Tilson was incarcerated in the St. Francis County

the Department lacked written procedures. Tilson did not establish that the police failed to follow proper procedures when they arrested Tilson and brought him to the St. Francis County jail. Tilson did not establish that a different police procedure would had caused a probable cause hearing to have occurred promptly. Significantly, Tilson did not establish that Goff or the Department "held" Tilson in the St. Francis County jail. See supra note 9. The only connection Goff and the Department had with Tilson's detention related to their supervision of the arresting and investigating officers. We find that the evidence presented to the jury was insufficient as a matter of law to find that either the Department or Goff caused Tilson's incarceration.

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jail.

Because we find there was no legally sufficient basis upon which to hold either the Department or Goff liable for the deprivations inflicted on Tilson, we reverse the denial of the motion for judgment as matter of law.[16]

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[16]The dissent ignores the basis for our holding: Tilson failed to offer the jury any evidence that the Department or Goff caused his deprivation of liberty for 14 months. Section 1983 cannot be premised on vicarious liability. Monell, 436 U.S. at 692. As disturbed as we are by the deprivations borne by Tilson, our inquiry under § 1983 does not end with a finding that a plaintiff has suffered a constitutional deprivation. The claimant must go further and prove that the defendant caused that deprivation. A court cannot remedy a deprivation unless

Notwithstanding this holding, we are deeply offended by the substantial deprivations borne by Tilson. Moreover, it appears that at least one of the actors responsible for Tilson's deprivation of liberty was never a party to this action: the Arkansas prosecutor who failed to charge Tilson with a crime or to bring him to trial.[17]

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the plaintiff proves his or her case and sues the correct defendants.

[17]Unfortunately, Tilson's statute of limitations appears to have run, see Ketchum v. City of West Memphis, 974 F.2d 81, 82 (8th Cir. 1992) (Arkansas's general personal-injury statute of limitations period of three years applies to § 1983 claims), thus depriving him of the opportunity to bring a claim against the prosecutor. But see Lewellen v. Raff,

Although under our jurisprudence we cannot preserve a right of recovery for Tilson, we urge Arkansas to prevent a reoccurrence of this loss. The Arkansas Rules of Criminal Procedure do not mandate a time period within a detainee must receive a preliminary hearing or an arraignment. In contrast, the Federal Rules of Criminal Procedure mandate a preliminary hearing within ten days of an incarcerated arrestee's initial appearance. Fed. R. Crim. P. 5(c). A bright-line rule, such as the federal ten-day limit, is obviously necessary to

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843 F.2d 1103, 1114 (8th Cir. 1988) (finding that prosecutors were absolutely immune from liability for their actions when reviewing evidence and deciding whether to initiate a prosecution), cert. denied, 489 U.S. 1033 (1989).

protect the rights of individuals in such situations. If Arkansas had a similar rule, it is unlikely that Tilson would have spent fourteen months in jail. We can only hope that this case serves as the impetus for correcting what appears to be a grave deficiency in Arkansas procedures.

III. CONCLUSION

We reluctantly must reverse the district court's denial of the Department and Goff's motion for judgment as a matter of law, and thus, we remand to the district court with instructions to enter judgment for the defendants. The cross-appeal is dismissed with prejudice.

LAY, Senior Circuit Judge, dissenting.

The City of Forrest City Arkansas, incarcerated an innocent African-American man for fourteen months without an initial judicial determination of probable cause

following a warrantless arrest, and without filing an information or any other formal charge. The case lends itself to a strong inference of racial injustice by the city and county officials. Regardless of the intent, the events that occurred constitute a disgrace to the criminal justice system of any civilized society.

I. BACKGROUND

Jessie Tilson was arrested on April 4, 1989, by two police officers who were employed by the City of Forrest City, Arkansas. He was purportedly arrested for an alleged violation of his Missouri parole. The record lends support for the jury to find in actuality that city police officials were conducting a murder investigation and they were beginning to

focus on Tilson as the perpetrator.[1] Police officers testified that the national Crime Information Center (NCIC) indicated that Tilson was in violation of his parole in Missouri. Officer Dooley testified he verified Tilson's detainer by telephone with the Missouri Department of Corrections. The only documentary evidence of any such confirmation is a letter dated September 28, 1990.[2] The

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[1]For example, at trial officer Ramsey testified that he and officer Dooley "were investigating a [murder] suspect, ran the suspect through NCIC on our police computer. Suspect's name came back as being a wanted person out of Missouri." Trial Tr. at 214.

[2]The Missouri Parole Board had discharged Tilson from parole on August 2, 1989, more than one year before the

record shows that the questioning of Tilson and the ongoing investigation by the police officials from the date of his warrantless arrest until April 17, 1989, was related to the suspicion that Tilson had committed a murder.[3]

Tilson was not taken before any judicial officer at the time of his warrantless arrest. Pursuant to Rule 8.1

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date of the verification letter.cc

[3]Thus, a reasonable jury could find that Tilson's arrest was a pretext to submit Tilson to a custodial interrogation regarding the murder. Delay in taking an arrestee before a magistrate in order to collect further evidence is not an acceptable justification for delaying a probable cause hearing. See County of Riverside v. McLaughlin, 500 U.S. 44, 56 (1991).

of the Arkansas Rules of Criminal Procedure, Tilson was required to have been taken before a judicial officer "without unnecessary delay" for a probable cause hearing. See Ark. R. Crim. P. 8.1 The Constitution of the United States requires no less. See County of Riverside v. McLaughlin, 500 U.S. 44, 56 (1991); Gerstein v. Pugh, 420 U.S. 103, 124-25 (1975).

On April 17, 1989, while Tilson was still being held unlawfully, the same police officers procured a warrant for Tilson's arrest on a murder charge.[4] On April 19, 1989, Tilson was bound over to

[4]This fact seems to further corroborate that the original arrest and two week detention, without a probable cause hearing, was directly related to the unsubstantiated murder charge.

circuit court. After this date, Tilson did not appear in court again until June 11, 1990, the date he was released pursuant to a writ of habeas corpus.

Tilson brought suit against the Forrest City Police Department (the "City") and police officials under 42 U.S.C. § 1983 alleging violations of his constitutional rights. The jury found that Officers Dooley and Ramsey had not violated Tilson's constitutional rights, or at least had acted in good faith, but that the City and Police Chief Goff had violated Tilson's constitutional rights. The district court, the Honorable Elsijane T. Roy, and experienced trial judge, denied motions for directed verdict, judgment notwithstanding the verdict and new trial, from which the City and Chief Goff appealed.

There is no proof that Tilson, arrested without a warrant, ever received a probable cause hearing. The Supreme Court has held that the Fourth Amendment requires a probable cause hearing within forty-eight hours of a warrantless arrest, absent a bona fide emergency or other extraordinary circumstances. See County of Riverside, 500 U.S. at 57; see also Gerstein, 420 U.S. at 124-25. Hence, the burden of proof was on the City to show some type of emergency or extraordinary circumstance that caused the delay. See County of Riverside, 500 U.S. at 57. The government has made no effort to carry this burden.

The Arkansas Rules of Criminal Procedure apparently do not provide any time limit by which, after arrest, a prosecutor must file an information or

release a prisoner. Nor do the Arkansas Rules of Criminal Procedure provide for a preliminary hearing before a judicial officer if an information is not filed within a set time frame. See Linda A. Malone, The Availability of a First Appearance and Preliminary Hearing--Now You See Them, Now You Don't, 1983 Ark. L. Notes 41.[5] Arkansas Rule of Criminal

[5]The absence of a required preliminary hearing stands in sharp contrast to the Federal Rules of Criminal Procedure. Under Rule 5(c) of the Federal Rules of Criminal Procedure, a person charged with an offense to be tried by a district court judge is entitled to a preliminary examination within ten days of the initial appearance if the person is in custody. See Fed. R. Crim. P. 5(c). The preliminary

examination is not held if an indictment against the defendant is filed before the examination date. If Arkansas had a rule analogous to Rule 5(c), Tilson may well have been released from jail by April 29, 1989: he was bound over on April 19, hence a preliminary examination would have been scheduled for no later than April 29. Instead of waiting until June 10, 1990, to determine that there was no reason to hold Tilson, a judicial officer could have ascertained such facts by April 29, 1989, and Tilson would have been released. I request that a copy of this opinion be sent to the Attorney General of the State of Arkansas. In the event that Arkansas procedures are deficient, as they appear to be, legislative action may be needed to

Procedure 8.3 requires judicial officers to inform an arrestee of the charge and "if unable to dispose of the case" the judicial officer shall "determine by an informal, non-adversary hearing whether there is probable cause for detaining the arrested person." Ark. R. Crim. P. 8.3(c).

There is no proof by the state that Tilson ever received such a hearing after his initial arrest or after issuance of his arrest warrant on April 17. One

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obviate the recurrence of detaining any individual without a prompt judicial determination of probable cause. Legislative action may also be necessary to prevent an arrestee from languishing in jail for such an extended period of time when the prosecutor has no intention of bringing charges.

reason may be that Tilson never was formally charged after his original arrest. The fact that Tilson was arrested without a warrant lays the predicate to the required Gerstein probable cause hearing.

The jury in this case found that the Chief and the City had violated Tilson's constitutional rights. The jury was entitled to find that the police department and Chief Goff showed reckless disregard for the constitutional rights of suspects by failing to implement procedures and to ensure that they were understood and followed. See Howard v. Adkison, 887 F.2d 134, 137-38 (8th Cir. 1989). In reviewing the district court's denial of the defendants' motions for directed verdict or judgment notwithstanding the verdict, this court

must consider the evidence in the light most favorable to the prevailing party and give the prevailing party "'the benefit of all favorable inferences which may reasonably be drawn from the facts proved.'" Morgan v. Arkansas Gazette, 897 F.2d 945, 948 (8th Cir. 1990) (citation omitted).

II. LIABILITY OF POLICE CHIEF GOFF

There should be little question that the liability of Chief Goff should be upheld. Proof of actual knowledge of a constitutional violation is not necessary for a supervisor to be liable; reckless disregard is sufficient. Howard v. Adkison, 887 F.2d at 138 ("This court has consistently held that reckless disregard on the part of a supervisor will suffice to impose liability."). Liability can be imposed upon Chief Goff either for his

failure to train or supervise his officers, or for his personal involvement in Tilson's detention.

A. Personal Involvement

Chief Goff could be held liable for Tilson's constitutional deprivations based on his personal involvement in the continued detention of Tilson. In Webster v. Gibson, 913 F.2d 510 (8th Cir. 1990), this court found that the plaintiff had alleged personal involvement on the part of the sheriff sufficient to withstand a motion to dismiss. Webster was subject to a warrantless arrest and was detained for forty-five days without receiving a probable cause hearing. The court found that Webster stated a claim against the sheriff even though the sheriff was not the arresting officer), because he alleged that the sheriff knew of Webster's

detention and knew there was a statutory requirement that Webster be taken before a judicial officer without unnecessary delay. Id. at 514 ("Webster's allegations that the sheriff was aware of and directly involved in his detention for forty-five days without a probable cause hearing and knew that there was a statutory requirement regarding detention of an individual were sufficient to show the sheriff's knowledge of Webster's wrongful detention.").

Likewise, in Wayland v. City of Springdale, 933 F.2d 668 (8th Cir. 1991), this court determined that the city, police chief and two officers could be held liable for the detention of an individual for six days following a warrantless arrest, even if they were not responsible for the delay in arraignment.

Wayland, 933 F.2d at 670-71. The court found the pleadings provided sufficient allegation of the factual nexus of the unauthorized detention with the subsequent jail-suicide of the detainee.

The evidence in the present case supports a finding regarding Chief Goff's knowledge of Tilson's arrest, continued incarceration, and the police department's duty to comply with the statutory requirement that Tilson be "taken before a judicial officer without unnecessary delay" pursuant to Rule 8.1 of the Arkansas Rules of Criminal Procedure.[6]

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[6]By his own admission, "Chief Goff knew that the plaintiff was in jail but, did not do anything to determine why he was in jail." Appellants' Br. at 7. The City of Forrest City, Arkansas, has 13,364 occupants. 1990 Census of

The Chief admitted he knew Tilson was arrested. It was his burden to show why

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Population and Housing, Population and Housing Unit Counts: Arkansas, 1990 CPH-2-5, Table 9, p. 46. It is a reasonable inference that the Chief of Police in a small community would be aware of who was arrested, why he or she was arrested, and the status of each defendant, is more than just a figurehead. It is a reasonable inference for a jury to decide that the Chief knew of Tilson's status and the fact that he had not been charged or taken before a judicial officer. Cf. Coleman v. Franz, 754 F.2d (7th Cir. 1985) (two members of panel stating that a sheriff has a duty to release a detainee if the detainee is not brought before a magistrate judge within a reasonable amount of time).

Tilson was detained without being given a prompt probable cause hearing. See County of Riverside, 500 U.S. at 57.[7]

The trial judge properly submitted

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[7]In County of Riverside, the Supreme Court stated:

> Where an arrested individual does not receive a probable cause determination within 48 hours, the calculus changes. In such a case, the arrested individual does not bear the burden of proving an unreasonable delay. Rather, the burden shifts to the government to demonstrate the existence of a bonafide emergency or other extraordinary circumstance.

500 U.S. at 57.

this issue to the jury. The reasonableness of length of a detention is a fact question for the jury. See Wayland, 933 F.2d 1155, 1162-63 (10th Cir. 1991). Courts have recognized that a Fourth Amendment violation, as defined by Gerstein and County of Riverside, can give rise to money damages pursuant to § 1983. See, e.g., Willis v. City of Chicago, 999 F.2d 284, 288-90 (7th Cir. 1993) (affirming finding that detention of forty-five hours without probable cause hearing violated arrestee's Fourth Amendment rights, although nominal damages award of $1 did not entitle arrestee to attorney's fees), cert. denied, 114 S. Ct. 879 (19984); Hallstrom v. City of Garden City, 991 F.2d 1473, 1480-83, 1486 (9th Cir.) (finding that delay of four days between arrest and probable cause hearing

violated arrestee's Fourth Amendment rights and remanding for a determination of damages against some defendants), cert. denied, 114 S. Ct. 549 (1993); Llanguno v. Mingey, 763 F.2d 1560, 1568 (7th Cir. 1985) (finding that detention of forty-two hours violated arrestee's Fourth Amendment rights, where officers learned early in the detention that arrestee would not be charged and the only reason for delay was that the police were trying to build a case against arrestee, and reversing jury verdict in favor of defendants and directing verdict in arrestee's favor). Hence, the jury was entitled to impose liability on Chief Goff based on his personal involvement in Tilson's confinement.

B. Failure to Train or Supervise

Chief Goff could also he held liable

for his failure to train or supervise his officers. The evidence is quite explicit that Goff, as Chief of Police and thus the supervisory authority of the police, failed to supervise or train his officers concerning arrest procedures and the necessity under Arkansas law, as well as the Constitution of the United States, to ensure that a person seized by a warrantless arrest is taken before a judicial officer "without unnecessary delay" for a probable cause hearing. See Ark. R. Crim. P. 8.1. This claim is not based upon respondeat superior liability. See Monell v. Department of Social Servs. of New York, 436 U.S. 658, 691 (1978). It is based upon a deliberate indifference to the rights of Tilson or any other arrestee. See City of Canton v. Harris, 489 U.S. 378, 388 (1989); Bolin v. Black,

875 F.2d 1343, 1347 (8th Cir.), cert. denied, 493 U.S. 933 (1989).

If there was no training or supervision in this regard, the chief of police is responsible. See Hahn v. McLey, 737 F.2d 771, 773 (8th Cir. 1984) (per curiam) ("[A] supervisor may be liable for the acts of a subordinate if injury is inflicted upon the plaintiff as a result of a breach of the supervisor's duty to train, supervise, or control the actions of subordinates."). There was testimony at trial that in his eighteen years as Chief of Police, Chief Goff had never established procedures for the Police department. Thus, the jury was entitled to conclude under the court's instructions that both the Chief and the police department failed to train the officers in how to handle extraditions or in how to

deal with warrantless arrests to ensure that a judicial officer is advised of a detainee's presence and that a probable cause hearing is held.

Such deliberate indifference and lack of proof as to the reasons for the prolonged detention provide a jury with a basis to find liability. Such situations clearly fall within the ambit of § 1983, which seeks to protect individuals such as Tilson from the deprivation of their constitutional rights. It makes a mockery of the Civil Rights Act to minimize the liability of the Chief of Police. If the Chief, who controls the policies and procedures of his department, is not responsible, then under these circumstances, nobody can be held liable and the Civil Rights Act becomes a sham for those whose innocence and liberty are

trampled upon. It clearly is no answer to say the arresting officers might be liable. There is no showing by Chief Goff that the arresting officers knew of their duty to deliver Tilson to a judicial officer.[8] The City had the duty to ensure a prompt judicial determination of probable cause and this responsibility was implicitly delegated by law to the

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[8]Additionally, it was erroneous for the jury to be instructed on qualified immunity with respect to the arresting officers. It is clearly established that qualified immunity is a question of law and should be decided by the court. See Angarita v. St. Louis County, 981 F.2d 1537, 1548 n.18 (8th Cir. 1992). That issue is not before us, however, because Tilson's counsel failed to object to the instruction or raise the issue on appeal.

supervisor of the Police Department to see that it was carried out.

Tilson's Fourth Amendment rights as explicated in Gerstein have been violated. This fact is indisputable. The question posed is who shall be responsible for the violation. Chief Goff cannot hide behind the dereliction of his officers if the officers were never trained or taught of their constitutional legal duty. Cf. Murray v. City of Chicago, 634 F.2d 365, 366 (7th Cir. 1980) ("The defendants should not be permitted to 'get off the hook' by merely pointing the finger at each other. Someone is surely at fault for failing to establish or execute appropriate procedures for preventing such serious malfunctionings in the administration of justice."), cert. dismissed, 456 U.S. 604 (1982). This is a

travesty of justice for which the City of Forrest City, represented by the Police Department, has a responsibility. The jail were Tilson was detained was not owned and run by police officers, but rather it was part and parcel of the governmental structure of the City of Forrest City. It is clear that the City was responsible for Tilson's detention. The question we face is whether there was a legal responsibility under § 1983. In my view, Chief Goff may be held liable; so, too, may the City.

III. LIABILITY OF THE CITY OF FORREST CITY

A municipality that operates under a policy or custom that unconstitutionally deprives a citizen of his or her rights may be liable under §1983. Monell v. Department of Social Servs. of New York, 436 U.S. 658, 694 (1978). This is true

even if the arresting officers are not held responsible because of some good faith belief, meriting qualified immunity.[9] A municipality may not assert qualified immunity as a defense. Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 113 S. Ct. 1160, 1162 (1993).

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[9]Of course, if a jury found that petitioner had not been caused any constitutional injury by the individual officers, then the City could not be liable for any injury notwithstanding a policy that might in itself be illegal. See Los Angeles v. Heller, 475 U.S. 796, 799 (1986). However, here no such finding was made. The jury was told the individual officers could be exonerated if they acted in good faith. No such instruction was given in Heller.

In Gerstein, states were given the responsibility of instituting procedures to assure prompt hearings for those arrested without warrant. In the present case, the City failed to adopt any such procedures, and this failure resulted in the deprivation of Tilson's Fourth Amendment rights. A jury could reasonably find that the City demonstrated "deliberate indifference" to the rights of those who entered that criminal justice system in Forrest City and that the City should be held liable. See Oviatt v. Pearce, 954 F.2d 1470, 1474 (9th Cir. 1992) ("a local governmental body may be liable if it has a policy of inaction and such inaction amounts to a failure to protect constitutional rights"); Fiacco v. City of Rensselaer, 783 F.2d 319, 327 (2d Cir. 1986) ("[a municipality] should not

take a laissez-faire attitude toward the violation by its peace officers of the very rights they are supposed to prevent others from violating"), cert. denied, 480 U.S. 378, 388 (1989) (adopting "deliberate indifference" standard for § 1983 failure-to-train claims). Moreover, a jury could find the City liable based upon the inaction of Chief Goff. Municipal officials who have final policy making authority may subject not only themselves, but also the government, to liability under § 1983. Angarita v. St. Louis County, 981 F.2d 1537, 1546-47 (8th Cir. 1992).

There existed sufficient evidence to support Tilson's claim against the City of Forrest City. Without recounting the undisputed facts above, it is clear that it was the prolonged inaction of the City,

through its policymaker, Chief Goff, that allowed Tilson's illegal detention to occur. Cf. Bordanaro v.McLeod, 871 F.2d 1151, 1162 (1st Cir.) (holding that "[t}he 'do nothing policy' of the Mayor and the Chief [of Police] exposed the citizens . . to imminent police misconduct, and was attributable to the municipality"), cert. denied, 493 U.S. 820 (1989). Neither the Chief nor anyone else in the City ever promulgated any policy to enforce Rule 8.1 of the Arkansas Rules of Criminal Procedure, which codifies the constitutional requirement that an arresting officer take arrestee before a judicial officer for a determination of probable cause as a condition of continued confinement. Indeed, in their appellate brief defendants admit that "[t]here are no written procedures in a criminal case."

Appellant's Br. at 8. The record fully supports the conclusion that Tilson's illegal detention was the direct result.

In light of the strong evidence that Tilson was arrested as a murder suspect, and not a parole violator, it should be manifest that a County of Riverside/Gerstein violation existed. An officer's reading an NCIC detainer alone does not constitute a judicial finding of probable cause. A fundamental concern of Gerstein, when a warrantless arrest occurs, is the fact that:

> the suspect's need for a neutral determination of probable cause increases significantly. . . . . Pretrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships. . . . When

> the stakes are this high, the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty.

420 U.S. at 114 (citations omitted). To illustrate the relevance of these concerns, I note that while Tilson was incarcerated, his wife left him and he lost his job.

IV. DAMAGES

The more difficult question is whether the Chief's and the City's failure to formulate detention policies was a "moving force," see Monell, 436 U.S. at 694, behind Tilson's incarceration from April 17, 1989 to his release in June of 1990--the period after an arrest warrant

was served on Tilson for murder. It is tempting to conclude that the Chief's and the City's liability should be cut off when the arrest warrant was issued, because after that point, Tilson became the responsibility of the sheriff and the state prosecutor. Indeed, it is plausible to argue that after the warrant was issued, the continued detention of Tilson could not have been remedied by any further action of Chief Goff or the City.[10] Even if these observations are

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[10]Moreover, one could argue that no constitutional violation even occurred after Tilson's bindover order. It would appear, if one views the unlawful detention of Tilson as two separate incidents, that Gerstein would no longer serve as the predicate for Tilson's cause of action because his second arrest and

detention was judicially approved by the issuance of an arrest warrant based on probable cause. See Baker v. McCollan, 443 U.S. 137, 144 (1979) (finding no constitutional violation where detainee "was indeed deprived of his liberty for a period of days, but it was pursuant to a warrant conforming . . . to the requirements of the Fourth Amendment"); see also Albright v. Oliver, 114 S. Ct. 807, 814 (1994) (Scalia, J., concurring) ("I think it unlikely that the procedures constitutionally 'due,' with regard to an arrest, consist of anything more than what the Fourth Amendment specifies"). One might reason, however, that Tilson's procedural due process rights were violated since he was not given a probable cause hearing, an arraignment or

a preliminary hearing. See Baker, 443 U.S. at 145 (indicating that, "depending on what procedures the State affords defendants following arrest and prior to actual trial, mere detention pursuant to a valid warrant but in the fact of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of 'liberty. . . without due process of law'"); Coleman v. Franz, 754 F.2d 719 (7th Cir. 1985) (holding an eighteen day detention before first appearance violated due process); see also Garcia v. City of Chicago, No. 92-4090, 1994 Wl 194167, at *4-*8 (7th Cir. May 19, 1994) (Cudahy, J., concurring in part and dissenting in part) (discussing due process violation where authorities know they have no basis

correct, however, and liability might terminate upon the issuing of the arrest warrant, Tilson would at the very minimum be entitled to a new trial focusing solely upon his initial two-week detention in violation of the Fourth Amendment rights.

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for detention following lawful arrest); Patton v. Przybylski, 822 F.2d 697, 700-01 (7th Cir. 1987) (Posner, J.) (indicating that allowing a person to "languish in jail" over "his vigorous protest that he is the wrong man. . . and keep[ing] him in jail for this period without either investigating the case or bringing him before a magistrate raises serious constitutional questions . . . under the due process clause"). But these theories cannot be urged against the City and the Chief because they did not cause the denial of due process.

More to the point, though, it should be concluded that this result would be incorrect. Under the existing evidence, the verdict and judgement should be affirmed. If the City's failure to promulgate a policy on detention procedures was "closely related to" Tilson's unlawful continued incarceration, regardless of whether others were at fault,[11] then the verdict should stand. See City of Canton, 489 U.S. at 391. I think it analytically suspect to view Tilson's incarceration as two separate

[11]Others were at fault; clearly the prosecution, in failing to bring a charge or file any information during Tilson's continued incarceration, was a factor. Tilson's lawyer sat on his thumbs in failing to seek a petition for habeas corpus requiring Tilson's release.

incidents. Tilson remained in the same jail for fourteen months. He was originally placed there and unlawfully detained without a probable cause hearing in accordance with the policies of inaction of Chief Goff and the City. There exists a strong inference, supported by testimony of the arresting officers themselves, that Tilson's unlawful detention was unrelated to any parole violation but was, from the start, directly related to the police investigation of the murder for which Tilson was a suspect. The jury reasonably could have believed that the parole violation was a mere subterfuge for Tilson's warrantless arrest and detention. Thus, the initial detention without a probable cause hearing had a direct nexus to his arrest for the murder charge and

his continued detention. This detention was a continuing violation of Tilson's Fourth Amendment rights. See Albright v. Oliver, 114 S. Ct. 807, 815-16 (1994) (Ginsburg, J., concurring) (discussing seizure under Fourth Amendment).

The Civil Rights Act does not replace the law of joint tortfeasors. See Malley v. Briggs, 475 U.S. 335, 345 n.7 91986 ("§ 1983 'should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions.'") (citation omitted). The mere fact that others, be they the sheriff, the prosecutor, or Tilson's own lawyer, may have contributed to Tilson's unlawful detention does not relieve other tortfeasors who substantially contributed to the detention. Had the requirements of

Gerstein initially been met, Tilson would have been taken before a neutral judicial officer within 48 hours of his arrest. At that time, it may have been difficult for the State to establish that Tilson was still wanted by the State of Missouri, or more importantly, to show probable cause for his detention on the murder charge. Although the testimony of the officers is contradictory, it appears that the application for an arrest warrant filed by Sgt. Dooley on April 17 includes statements made by Tilson and by other witnesses obtained more than 48 hours after his initial incarceration. I therefore find that there is more than sufficient evidence to support the judgment.

The jury's award of punitive damages against the City and the Chief indicated

that the jury was convinced that "the act or omission of one or more defendants which proximately caused the actual injury or damage to the plaintiff, was maliciously, or wantonly, or oppressively done . . ." Trial Tr. at 333.[12] In such

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[12]In the jury instructions, the court further explained:

An act or failure to act is maliciously done if prompted or accompanied by ill will or spite grudge, either toward the injured person individually, or toward all persons in one or more groups or categories of which the injured person is a member. An act or failure to act is wantonly done if done in a reckless or callous disregard of, or indifference to the rights of one or more persons including the injured person.

a situation, the jury was justified in imposing liability on the City and the Chief. See Owens v. City of Independence, 445 U.S. 622, 654 (1980) ("It hardly seems unjust to require a municipal defendant which has violated a citizen's constitutional rights to compensate him for the injury suffered thereby. Indeed, Congress enacted § 1983 precisely to provide a remedy for such abuses of official power"). The complete lack of

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An act or failure to act is oppressively done if done in a way or manner which injuries or damages or otherwise violates the rights of another person [with] unnecessary harshness or severity, as by misuse or abuse of authority or power, or by taking advantage of some weakness or disability or misfortune of another.

procedural safeguards allowed Tilson's illegal detention to go unchecked. I would affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX: C

FILED
U.S. DISTRICT
COURT EASTERN
DISTRICT OF
ARKANSAS
JAN 11 1993
CARL R. BRENTS,
CLERK
BY: **J. PIGEE**
DEP CLERK

IN THE UNITED STATES DISTRICT COURT FOR

THE EASTERN DISTRICT OF ARKANSAS

WESTERN DIVISION

JESSIE TILSON,

Plaintiff,

v. Case No. LR-C-90-651

FORREST CITY POLICE DEPARTMENT,

et al.,

Defendants.

ORDER

Now before the Court is the defendant's motion for a judgment not withstanding the verdict and for a new

trial. They argue that there was not sufficient evidence in the record to support the jury's finding that the defendants had each engaged in conduct sufficient to hold them liable under § 1983. The Court has reviewed the evidence and placed before the jury and finds that if the jury had found it credible, it could have properly returned the verdict which it did. In rendering its verdict, the jury simply afforded greater credit to the plaintiff's view of the facts.

Accordingly, the defendant's motion is denied.

IT IS SO ORDERED.

SIGNED BY: ELISJANE T. ROY

United States District Judge

January 11, 1993

THIS DOCUMENT ENTERED ON DOCKET SHEET IN COMPLIANCE WITH RULE 58 AND/OR 79(a) FRCP ON 1/12/93 BY JP

APPENDIX: D

FILED
U.S. DISTRICT
COURT
EASTERN DISTRICT
ARKANSAS
SEP 13 1990
CARL R. BRENTS,
CLERK
BY: _____
DEP CLERK

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF ARKANSAS

LITTLE ROCK DIVISION

JESSIE TILSON

Plaintiff

VS.

ST. FRANCIS COUNTY SHERIFF'S DEPARTMENT; SHERIFF DAVE PARKMAN, Individually and in his official capacity; FORREST CITY POLICE DEPARTMENT; CHIEF JOE GOFF; SGT. BILL DOOLEY, Individually and in his official

capacity; and OFFICER DUEY RAMSEY, Individually and in his official capacity

Defendants

COMPLAINT

Comes now the plaintiff, Jessie Tilson, by and through his attorney, Alvin L. Simes of Simes & Simes, Attorneys, and for his cause of action against the defendants, St. Francis County Sheriff's Department, Sheriff Dave Parkman, Forrest City Policy Department, Chief Joe Goff, Sgt. Bill Dooley, and Officer Duey Ramsey, states:

JURISDICTION

Jurisdiction in this claim is pursuant to Rule 42 U.S.C. Section 1983; 42 U.S.C. Section 1985; the Fourth, Fifth, Sixth, and Eighth Amendments to the United States Constitution. Jurisdiction is also invoked pursuant to the Fourteenth

Amendment to the United States Constitution.

I.

That on April 4, 1989, plaintiff was arrested by Sgt. Bill Dooley and Officer Duey Ramsey in Forrest City. The plaintiff was taken to the Forrest City Police Department. Plaintiff was taken to the Forrest City Police Department. Plaintiff was questioned and arrested without an attorney being present. Throughout the course of the questioning, plaintiff requested a lawyer. However, his rights to have a lawyer was denied. That all times herein alleged, the defendants were acting under color of state law. That the defendants intentionally, deliberately, and with malicious, violated the plaintiff's sixth Amendment Right to Counsel.

II.

That the plaintiff, Jessie Tilson, was never charged with committing any substantive offense. Upon his arrest on April 4, 1989, he was incarcerated in the St. Francis County Jail for fourteen months. Plaintiff was not released until June 11, 1990. Plaintiff spent fourteen months unlawfully incarcerated in the St. Francis County Jail. Plaintiff's unlawful incarceration was due to bad faith, poor investigation, and malice on the behalf of each defendant.

III.

That the plaintiff is married and has eight children. During the course of his incarceration, plaintiff was denied the reasonable livelihood of spending time with his family. Plaintiff was denied the right to have a loving family

relationship with his wife and childern for fourteen months. Due to this unlawful incarceration, plaintiff has been damaged substantially.

IV.

That at the time of plaintiff's arrest, the defendants, Sgt. Bill Dooley and Officer Duey Ramsey, advised plaintiff that they had an arrest warrant. At the time of the arrest, the officers did not have probable cause to arrest the plaintiff. At the time of the arrest, the defendants knew they lacked probable cause to arrest the plaintiff. However, despite that, the defendants obtained a false affidavit from Josephine Williamson to obtain an illegal arrest warrant. It was this statement which led to the initial arrest of plaintiff. At the time of the arrest, the officers knew that the

affidavit signed by Josephine Williamson was false. However, they made the arrest, not withstanding the fact.

V.

That at the time of the arrest, the officers never showed a valid arrest warrant to the plaintiff. Plaintiff was locked up in the St. Francis County Jail for fourteen months. During the fourteen months, the plaintiff was told by the Defendants Duey Ramsey and Bill Dooley that he would die in the electric chair if he did not confess to this crime. Each defendant appeared at plaintiff's cell indicating that he would die in the electric chair.

VI.

That the plaintiff's arrest was not based on independent evidence. The defendants failed to exercise good faith

to obtain corroborating evidence that the plaintiff committed this offense. On several occasions, while plaintiff was incarcerated, he was questioned by Sgt. Bill Dooley and Officer Duey Ramsey, violating his Sixth Amendment Right to counsel. Had the defendants conducted an independent investigation, they would have known the plaintiff was not a possible suspect.

VII.

That the night that plaintiff was arrested, the officers knew they had the wrong suspect, and knew they were acting without adequate probable cause. At the time of the arrest, the officers knew that the plaintiff was the wrong suspect. However, the defendants made the arrest with unlawful and malicious conduct.

VIII.

Further, the defendants' malicious conduct led to the publication in the local newspaper with the plaintiff's name and picture as a murderer. Plaintiff has not committed a murder. However, the plaintiff's character has been destroyed as a result of the negligent and malicious investigation conducted by the defendants. As a result of the defendants' conduct, the plaintiff's entire future has been totally destroyed.

IX.

That taking fingerprints would have shown that the plaintiff was not the suspect who committed the murder. However, the defendants took no steps to obtain finger prints that would have clearly shown that the plaintiff was not at the scene of this particular murder.

The defendants made false statements and conducted a malicious criminal investigation with the purpose and intent to destroy the plaintiff's character and total future.

X.

That the plaintiff almost lost his mental stability as a result of being unlawfully incarcerated for fourteen months. Plaintiff endured great pain and suffering, mental anguish, and emotional distress as a result of the defendants' malicious and unlawful conduct. The plaintiff was without his normal family life and life activities for fourteen months. The plaintiff was denied unlawful life, liberty, and pursuant of happiness as a result of the unlawful conduct of Officer Duey Ramsey and Sgt. Bill Dooley.

XI.

That had the defendants, St. Francis County Sheriff's Department and Forrest City Police Department, conducted a follow-up investigation or independent investigation, this unlawful detention could have been avoided. However, the St. Francis County Sheriff's Department and Forrest City Police Department did nothing to prevent the gross injustice.

WHEREFORE, PREMISES CONSIDERED, plaintiff prays that this court issue an Order stating that the plaintiff's constitutional rights have been intentionally and maliciously violated by each named defendants. That the plaintiff's future has been totally destroyed as a result of the unlawful conduct of each defendant. The plaintiff requests $3,000,000.00 in compensatory

damages. The plaintiff requests $2,000,000.00 in punitive damages, and all other relief in which this Court deems proper and necessary. Further, plaintiff requests a trial by jury.

Respectfully submitted,

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_____

Alvin L. Simes

U.S.

FEB 9 1995

OFFICE OF THE CLERK

No. 94-1222

In The

Supreme Court of the United States

October Term, 1994

JESSIE TILSON

Petitioner,

vs.

FORREST CITY POLICE DEPARTMENT,
JOE GOFF, CHIEF,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. THERE IS NOT SUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT THE JURY'S VERDICT IN IMPOSING LIABILITY UPON CHIEF JOE GOFF UNDER 42 USC 1983.

II. THE DECISION OF THE COURT OF APPEALS IS NOT ERRONEOUS.

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JURISDICTION

The Court of Appeals entered its Judgment on July 5th, 1994 and denied a Request for Rehearing En Banc on August 22, 1994. The jurisdiction of the Court of Appeals is based on 42 USC § 1983 and 28 USC § 1291. This Court's jurisdiction is based on 28 USC § 1254.

STATEMENT OF THE CASE

Jessie Tilson the Petitioner was arrested by two (2) officers of the Forrest City Police Department on April 4, 1989 and was incarcerated until his release on June 11, 1990. The arrest was based upon the existence of a parole violator's warrant in the state of Missouri (TR vol. 1, 50). On April 17, 1989 a warrant was issued out of the Circuit Court of St. Francis County, Arkansas charging the Defendants with first degree murder and setting his bond at Fifty Thousand Dollars ($50,000.00) (TR vol. 1, 68). The Petitioner was taken to the Municipal Court of Forrest City, Arkansas on April 19, 1989 and the case was bound over to Circuit Court. At that time the bond was set by the Municipal Court (TR vol. II, 240,241). At that point, the policemen turned their file over to the Prosecuting Attorney's Office. The Prosecutor should have prepared a second Affidavit to go with the formal charging document, the Information. That document is customarily filed in Court by the Prosecuting Attorney and the police authorities do not have the right to file any such document (TR vol. II, 242). For some reason the Prosecuting Attorney's Office never filed an Information in Circuit Court and the Defendant was never formally charged in

Circuit Court. The jury entered a verdict in favor of the two (2) policemen involved, finding that they had not violated Petitioner's civil rights and a verdict against the Chief of Police and Forrest City Police Department. A Motion for New Trial or Judgment not withstanding the Verdict was filed in the District Court and the same was denied. The United States Court of Appeals for the Eighth Circuit reversed the District Court and held that there was no evidence that the Chief or the Police Department did anything to violate Petitioner's rights and held that there was no custom or policy of the Police Department that had caused the Petitioner's incarceration. The Court of Appeals also found that if there were no violations of the Constitutional rights of the Petitioner by the actors, the two (2) police officers, then there could be no violations of the petitioner's rights by the Chief of the Police Department as there was no proof of anything that the Chief or the Department did that would have constituted a violation of Petitioner's rights.

SUMMARY OF ARGUMENT

The Petitioner was arrested on April 4, 1989 by Officers Bill Dooley and Dewey Ramsey of the Forrest City Police Department on a parole violator's warrant out of Missouri. Thereafter, the Defendant was re-arrested on April 17, 1989 on a warrant issued out of the Circuit Court of St. Francis County charging the Defendant with first degree murder. The Defendant's bond was set at Fifty Thousand Dollars ($50,000.00) by the Court. On April 19, 1989 the Defendant was taken to the Forrest City Municipal Court for his first judicial appearance on

the murder charge and was bound over to the Circuit Court of St. Francis County, Arkansas on a Fifty Thousand Dollar ($50,000.00) bond by the Municipal Judge. There is no proof in the case that the Defendant's incarceration resulted from any custom or policy of the Forrest City Police Department or of the Chief. He was arrested in the course of an ordinary police investigation, first on the parole violator's warrant and second on a warrant of arrest issued out of the Circuit Court of St. Francis County, Arkansas on April 17, 1989 charging him with first degree murder. There is no proof in the record that any reckless disregard of the actions of the officers by the Chief or the Police Department resulted in the Petitioner's incarceration. The Petitioner's lengthy incarceration resulted from inaction on the part of the Prosecuting Attorney in failing to file charges against the Petitioner in the Circuit Court and the Officers have no control over the Prosecuting Attorney.

Neither the Chief nor any other official representative of the Forrest City Police Department acted in any way toward the Defendant. Therefore, any municipal liability will have to be predicated on wrongdoing by the officers. The jury has exonerated the officers, in that it returned verdicts that neither of them did anything to violate the Petitioner's civil rights.

ARGUMENT

I. THERE IS NOT SUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT THE JURY'S VERDICT IN IMPOSING LIABILITY UPON CHIEF JOE GOFF UNDER 42 USC 1983.

Chief Joe Goff testified that he was the chief of police of Forrest City and had been for eighteen years (TR vol. I, 146). In his capacity as Chief he controls police officers within the Forrest City Police Department in that he supervises them. Both Bill Dooley and Dewey Ramsey are employees of his. He has never had any reason to discipline Sergeant Dooley nor Dewey Ramsey with regard to their investigative conduct (TR vol. I, 146). He never discussed the murder case with Dooley or Ramsey. He did not review this investigative file, never conducted any investigation on his own behalf (TR vol. I. 146, 147).

Bill Dooley had worked for the Forrest City Police Department for the last fourteen and one-half years and prior to that had worked for the Sheriff's Office in St. Francis County, Arkansas (TR vol. I, 45). Dooley had gone to several schools in 1958 and 1959 and went to other schools while he was in the Sheriff's Office. In 1978 when he gained employment with the Forrest City Police Department he had completed the State Police Academy in 1958 and had a certificate of completion (TR vol. I, 47). Since 1978 he has attended the State Police Academy for a narcotics school for two (2) weeks and has been to numerous schools and seminars in homicide investigation. He had extensive background and training in criminal investigation and had that background in 1989 (TR

vol. I, 48). Dooley has a high school diploma and a degree from East Arkansas Community College in criminal justice (TR vol. I, 49).

Officer Dewey Ramsey testified that he was a detective with the Forrest City Police Department and had been since 1987 (TR vol. II, 213). He has investigated five (5) or six (6) homicides and has completed the State Police Academy (TR vol. II, 220).

See *Monell v. City of New York*, 436 US 658, 56 L. Ed.2d 611, 98 S. Ct. 2018 (1977). In *Oklahoma City v. Tuttle*, 471 US 808, 85 L. Ed.2d 791, 105 S. Ct. 2427 at 471 US 823 the Court said:

> "In the first place, the word policy generally implies a course of action consciously chosen from among the various alternatives; it is therefore difficult in one sense even to accept the submission that someone pursues a 'policy' of 'inadequate training', unless evidence be adduced which proves that the inadequacies resulted from conscious choice, that is, proof that the policy makers deliberately chose the training program which would prove inadequate, and in the second place, some limitation must be placed on establishing municipal liability through policies that are not themselves unconstitutional, or the test set out in *Monell* would become a dead letter. Obviously, if one retreats far enough from a constitutional violation, some municipal 'policy' can be identified behind almost any such harm inflicted by a municipal officer; for example Rotramel would never have killed Tuttle if Oklahoma City did not have a 'policy' of establishing a police force. But *Monell* must be taken to require proof of a

> city policy different in kind from this latter example before a claim can be sent to a jury of a theory that a particular violation was 'caused' by the municipal 'policy'. At the very least there must be an affirmative link between the policy and the particular constitutional violation alleged".

The Petitioner states that Mr. Tilson was arrested without a Warrant and that the arrest was outside the jurisdiction of the Forrest City Police Department. Neither assertion is true. Whether the arrest was outside the city limits of the City of Forrest City has nothing to do with this cause of action, and that issue was never submitted to the jury. As to the assertion that Mr. Tilson was arrested without a Warrant or without process the proof is to the contrary. The arrest on April 4, 1989 was made pursuant to telecommunication from NCIC (TR vol. I, 51). The Petitioner, Jessie Tilson, was placed in jail by Bill Dooley (TR vol. I, 55). He sent a message to Missouri asking for confirmation of there being a valid warrant for the Petitioner for parole violation in Missouri and this was confirmed by a telephone call to Missouri (TR vol. I, 59, 60). A Warrant for the arrest of Tilson was issued out of the Circuit Court of St. Francis County on April 17, 1989. A copy of that Warrant is attached to this Brief as Addendum page one (1). Thereafter, on April 19, 1989 Tilson was taken before the Municipal Court of Forrest City, Arkansas to be bound over to Circuit Court and for the bond to be set at Fifty Thousand Dollars ($50,000.00) a copy of the docket sheet from the Municipal Court of Forrest City is attached hereto as Addendum page two (2).

All of the cases cited by the Petitioner from this point deal with a supervisor who is either participating in the wrongdoing, knows of it or has a reckless disregard for whether or not the wrongdoing is committed. There is no such proof in this case.

II. THE DECISION OF THE COURT OF APPEALS IS NOT ERRONEOUS

The panel's opinion in no way conflicts with precedent cited by the Petitioner in his brief. All of the cases cited by Petitioner stand for the proposition either that there must be some finding of probable cause before a Defendant can be held in jail or for the proposition that supervisory liability may only be invoked where the supervisor is aware of misconduct and does nothing about it. This Petitioner was afforded due process, in that when he was originally arrested, it was on a parole violator's Warrant out of Missouri. Shortly thereafter the Defendant was held in custody based upon a finding of probable cause made by a Circuit Judge and a Municipal Judge. The Petitioner cites *Wayland v. City of Springdale,* 933 F.2d 668 (8th Cir. 1991) for the proposition that the City, a Police Chief and two (2) officers could be held liable for the detention of an individual for six (6) days following a warrantless arrest, even if they were not responsible for the delay in arraignment. The rationale for the opinion in that case was that the officers had placed Plaintiff in jail, and, although they could not hasten the judicial process, they could have caused the Plaintiff's release at any point in time up until when a judicial officer made a finding that the Plaintiff must be held in

jail. That is not the case here. The Petitioner was originally arrested on a parole violator warrant from the state of Missouri on April 4th and re-arrested in jail on April 17th on a warrant issued from the Circuit Court of St. Francis County, Arkansas directing that Tilson be incarcerated in lieu of Fifty Thousand Dollars ($50,000.00) bond. Thereafter the Petitioner was bound over to Circuit Court by the Municipal Court of Forrest City, Arkansas.

Probably the most important point to be made in this case is that the only actors were Bill Dooley and Dewey Ramsey, the two (2) investigating officers. The Chief of Police did nothing to cause the Petitioner's incarceration nor did any other policy maker with the City of Forrest City, Arkansas. The Petitioner was not incarcerated because of some custom or usage of the City of Forrest City, Arkansas or of the Forrest City Police Department. That being the case the City's liability case be predicated only upon wrong doing by Officers Dooley and Ramsey, which because of the law must be attributed to the Chief or to the Police Department. In this case, by its verdict form, the jury found that neither Officer Ramsey nor Officer Dooley did anything to violate Petitioner's rights. The verdict forms are attached in the Addendum. Simply put if Dooley and Ramsey did not violate the Petitioner's rights then nobody did.

III. THE QUESTION PRESENTED IS IMPORTANT

The Petitioner cites no additional authority bearing on this case in this section of his argument.

CONCLUSION

This court should deny Certiorari in the cause and allow the same to be dismissed with prejudice pursuant to the mandate of the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted,

BUTLER, HICKY AND LONG

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ADDENDUM

App. 1

COURT DOCKET
LOWER COURT JUDICIAL SYSTEM
ARKANSAS COUNTY GOVERNMENT

Case Docket Number S89-1699

St. Francis County Jurisdiction

Receipt / Check Number

CRIMINAL SECTION

Nº 50493

NAME OF DEFENDANT	NATURE OF OFFENSE	CLASS OF OFFENSE	OFFENSE CODE	ARRESTING OFFICER (S)	UNIFORM TRAFFIC TICKET NUMBER	DATE OF ISSUANCE MO	DAY	YR	DATE OF COURT TERM MO	DAY	YR	CASH BOND RECEIPT NUMBER	CASH BOND COLLECTED
12-4-59 jessie Lee Tilson B/m 210 E. 14th St., Curthursville, MO.	Murder 1st degree			Dooley, Cole, Ramsey		4	17	89	4	19	89		

ATTORNEYS

FINE AND COST ITEMIZED

1. Fine/Peanlty		11. Judge's Retirement Fund	
2. Court Cost		12. DWI — State	
3. Prosecuting Attorney Fees		13. Game and Fish Commission	
4. Sheriff		14. Transportation Commission	
5. Public Defender		15. Highway Department	
6. Jail		16. DWI — County	
7. Intoximeter Charge		17. Statute Revision	
8. Law Library		18. Costs Under #621	
9. Legal Education		19	
10. State Police Retirement		20	

TOTAL FINE AND COST

TIME / PAYMENT AUTHORIZATION

1. Time Payment Authorized ☐
2. Time Payment Terms

JUDGMENT OF COURT

4/19/89 - Def ad. penalty; Appt A Klein Atty
Bond $4000 - Bound over to Cir. Ct. [illegible]

25

STATE OF ARKANSAS
COUNTY OF ST. FRANCIS } SS

CERTIFICATION

I, Geneva Vance, Clerk of the Municipal Court of Forrest City, Arkansas, do certify that the above and Foregoing is a true and correct copy of the docket sheet and the order entered in the above styled cause.

This the 21st day of December, 19 89

[illegible]
Deputy

APR 21 1989

DEFENDANT'S EXHIBIT
2

WARRANT OF ARREST

The State of Arkansas, to any Sheriff, Constable, Coroner, or Policeman, in this State:

IT APPEARING, that there are reasonable grounds for believing that Jessie Tilson has committed the offense of First Degree Murder in the County of St. Francis: you are therefore commanded Forthwith to arrest him and bring him before me to be dealt with according to law

GIVEN UNDER MY HAND, as Judge of circuit Court of Forrest City, Arkansas this 17 day of April, 1989.

Summon as witnesses for the State:

/s/ Henry Wilkinson
Circuit Judge

Bond $50,000.00

/s/ Henry Wilkinson

Tilson v. Forrest City Police Dept., et al

INTERROGATORIES

INTERROGATORY #1 DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT THE PLAINTIFF'S CONSTITUTIONAL RIGHTS WERE VIOLATED BY ONE OR MORE OF THE DEFENDANTS ACTING UNDER COLOR OF STATE LAW?

yes
(Answer "YES" or "NO.")

/s/ Illegible 11-18-92
Foreperson Date

IF YOU ANSWERED "YES," GO TO NUMBER 2. IF YOU ANSWERED "NO," INFORM THE COURTROOM SECURITY OFFICER YOU HAVE REACHED A VERDICT AND PREPARE TO RETURN TO THE COURTROOM.

INTERROGATORY #2 INDICATE WHICH OF THE NAMED DEFENDANTS YOU HAVE FOUND TO HAVE VIOLATED THE PLAINTIFF'S CONSTITUTIONALLY PROTECTED RIGHTS. (Answer "YES" or "NO" as to each defendant.)

FORREST CITY POLICE DEPARTMENT	YES
CHIEF JOE GOFF	YES
SGT. BILL DOOLEY	NO
OFFICER DUEY RAMSEY	NO

/s/ Illegible 11-18-92
Foreperson Date

(After completing #2, go to Interrogatory #3)

INTERROGATORY #3 STATE THE AMOUNT OF MONEY WHICH YOU FIND WILL FAIRLY COMPENSATE THE PLAINTIFF FOR THE DAMAGES HE SUFFERED AS A RESULT OF THE DEPRIVATION OF HIS CONSTITUTIONAL RIGHTS:

COMPENSATORY DAMAGES $12000.00

PUNITIVE DAMAGES $40000.00

/s/ Illegible 11-18-92

Foreperson Date

INFORM THE COURTROOM SECURITY OFFICER YOU HAVE REACHED A VERDICT AND PREPARE TO RETURN TO THE COURTROOM.